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INTERSTATE COMMERCE COMMISSION

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**AMERICAN COMPUTER LEASING CORPORATION**

**9¾% EQUIPMENT TRUST CERTIFICATES**

**Due 1977**

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**Equipment Trust Agreement**

**Dated as of December 1, 1970**

**by and between**

**THE PROVIDENT BANK,**  
*Trustee*

**and**

**AMERICAN COMPUTER LEASING CORPORATION**

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**EQUIPMENT TRUST AGREEMENT** dated as of December 1, 1970, between THE PROVIDENT BANK, a banking corporation organized under the laws of Ohio, as Trustee (hereinafter called the Trustee), and AMERICAN COMPUTER LEASING CORPORATION, an Ohio corporation, having its principal place of business in the State of Ohio (hereinafter called the Company).

WHEREAS, the Company has agreed to sell, assign and transfer to the Trustee security title to the railroad equipment described in Schedule I hereto subject to the provisions hereof, which equipment is to be rebuilt pursuant to the Railroad Equipment Reconstruction Agreement dated as of August 15, 1970 (hereinafter called the Manufacturing Agreement) between Seaboard Coast Line Railroad Company and the Company in the form of Annex A hereto; and

WHEREAS, such security title is to be vested in and is to be retained by the Trustee and such railroad equipment is to be leased to the Company hereunder until such security title is transferred to the Company under the provisions hereof; and

WHEREAS, the Company has entered into a Lease of Equipment dated as of August 15, 1970 (hereinafter called the Lease), with the Seaboard Coast Line Railroad Company, in the form of Annex B hereto, pursuant to which the Company will lease such railroad equipment to the Lessee, and such Lease of Equipment is to be assigned to the Trustee pursuant to the Assignment (as hereinafter defined); and

WHEREAS, American Computer Leasing Corporation 9¾ % Equipment Trust Certificates, Due 1977 (hereinafter called the Trust Certificates), are to be issued and sold, and the proceeds of such sale are to be held in trust by the Trustee and are to constitute a fund to be known as AMERICAN COMPUTER LEASING CORPORATION EQUIPMENT TRUST, DUE 1977, to be applied by the Trustee as provided herein; and

WHEREAS, the text of the Trust Certificates is to be substantially in the following form;

## [FORM OF TRUST CERTIFICATE]

\$.....

No. ....

## AMERICAN COMPUTER LEASING CORPORATION

## 9¾% EQUIPMENT TRUST CERTIFICATE

DUE 1977

The Provident Bank, Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement dated as of December 1, 1970 (hereinafter called the Agreement), between the Trustee and American Computer Leasing Corporation, an Ohio corporation (hereinafter called the Company), certifies that

or registered assigns is entitled to an interest of \$ in the American Computer Leasing Corporation Equipment Trust, Due 1977, payable in instalments as hereinafter provided, and to interest on the amount of unpaid principal from time to time due and owing pursuant to this Certificate due and payable semiannually on January 1 and July 1 in each year commencing , at the rate of 9¾% per annum from the date hereof until such principal amount becomes due and payable, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 10% per annum. Payments of principal and interest shall be made to the registered holder at the principal corporate trust office of the Trustee in Cincinnati, Ohio, in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. Each of such payments shall be made only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement or under the provisions of an Assignment of Lease and Agreement dated as of December 1, 1970,

between the Company and the Trustee. The liability of the Company for all payments to be made by it to the Trustee under the Agreement is limited by Section 4.03 of the Agreement. The principal amount of the Trust Certificates is due and payable in 12 semiannual installments of principal payable on January 1 and July 1, in each year commencing \_\_\_\_\_, calculated as provided in the Agreement so that, except as provided in the Agreement, the aggregate of the principal and interest payable on each such date shall be substantially equal. Interest shall be computed hereunder on the basis of a 360-day year of twelve 30-day months. **Since partial payments of principal on this Certificate are not required to be noted on this Certificate, inquiry should be made at said office of the Trustee as to the principal amount at any time remaining unpaid hereon.**

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not exceeding \$2,360,000 and issued or to be issued under the Agreement, under which security title to certain railroad equipment (or cash, as provided in the Agreement) and the above-mentioned Assignment of Lease and Agreement are held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement and the Schedule and Annexes thereto (copies of which are on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

The transfer of this Certificate in whole or in part may be registered upon the terms and conditions set forth in the Agreement on the books of the Trustee upon surrender to the Trustee at said office of the Trustee of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by duly authorized attorney, in form satisfactory to the Trustee. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) all instalments of principal and interest represented by this Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Vice Presidents or Assistant Vice Presidents, by his signature or a facsimile thereof, and its corporate seal or a facsimile thereof to be hereunto affixed or hereon imprinted and to be attested by the manual signature of one of its Secretaries or Assistant Secretaries.

Dated as of

THE PROVIDENT BANK,  
*Trustee,*

by .....  
*Vice President.*

Attest:

.....  
*Assistant Secretary.*

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Please insert Social Security or other  
identifying number of Assignee

.....  
the within American Computer Leasing Corporation 9¾% Equipment Trust Certificate and does hereby irrevocably constitute and appoint ..... attorney to transfer the said Certificate on the books of the within named Trustee, with full power of substitution in the premises.

Dated .....

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof, as hereinafter more particularly provided, with interest thereon, as hereinafter provided, payable semiannually in each year, and to evidence the rights of the holder or holders of the Trust Certificates in substantially the form hereinbefore set forth;

Now, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

## ARTICLE ONE

### DEFINITIONS

SECTION 1.01. *Definitions.* The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

*Acknowledgment* shall mean the Lessee's Acknowledgment of Assignment dated as of December 1, 1970 in the form annexed to the Assignment.

*Affiliate* of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, such corporation. For the purposes of this definition, *control* (including *controlled by* and *under common control with*), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

*Assignment* shall mean the Assignment of Lease and Agreement dated as of December 1, 1970, by the Company to the Trustee substantially in the form of Annex C hereto.

*Business Day* shall mean a calendar day, excluding Saturdays, Sundays and holidays or other days on which banks are authorized by law to close in Cincinnati, Ohio.

*Company* shall mean American Computer Leasing Corporation, an Ohio corporation.

*Corporate Trust Office* shall mean the office of the Trustee in Cincinnati, Ohio, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, on the date of execution of this Agreement, located at Fourth and Vine Streets, Cincinnati, Ohio 45202.

*Cost*, when used with respect to the Equipment, shall mean the actual cost thereof (including freight charges, if any, from the Manufacturer's plant to a point of delivery to the Lessee and including only such other items as may be properly included in such cost under sound accounting practice), as evidenced by the Manufacturer's invoice with respect to such Equipment.

*Deposited Cash* shall mean the aggregate of the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 2.01.

*Equipment* shall mean the rebuilt standard gauge railroad equipment described in Schedule I hereto.

*Equipment Purchase Agreement* shall mean the Railroad Equipment Purchase Agreement dated as of August 15, 1970, between the Company and Seaboard Coast Line Railroad Company substantially in the form of Annex D hereto.

*Event of Default* shall mean any event specified in Section 5.01 to be an Event of Default.

*Finance Agreement* shall mean the Finance Agreement dated as of December 1, 1970, among the Company and the Purchasers named in Annex I thereto.

*First Interest Payment Date* shall mean (a) July 1, 1971, with respect to Trust Certificates originally issued prior to June 29, 1971 and (b) January 1, 1972, with respect to all other Trust Certificates.

The word *holder*, when used with respect to Trust Certificates, shall mean the registered holder thereof and shall include the plural as well as the singular number.

*Lease* shall mean the Railroad Equipment Master Lease Agreement dated as of August 15, 1970, between the Company and the Lessee substantially in the form of Annex B hereto, together with Schedules thereto from time to time executed and delivered pursuant thereto to evidence the acceptance and delivery of equipment thereunder.

*Lessee* shall mean Seaboard Coast Line Railroad Company, a Virginia corporation, the lessee under the Lease, and its successors and assigns.

*Lessee's Certificate* shall mean a certificate signed by the President, any Vice President, or any Assistant Vice President and the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Lessee.

*Manufacturer* shall mean Seaboard Coast Line Railroad Company, a Virginia corporation, the manufacturer and seller under the Manufacturing Agreement.



*Manufacturing Agreement* shall mean the Railroad Equipment Reconstruction Agreement dated as of August 15, 1970, between the Company and the Manufacturer substantially in the form of Annex A hereto.

*Maturity Date* shall mean (a) January 1, 1977, with respect to Trust Certificates originally issued prior to June 29, 1971, (b) July 1, 1977, with respect to Trust Certificates originally issued on June 29, 1971, and (c) December 29, 1977, with respect to Trust Certificates originally issued after June 29, 1971.

*Officer's Certificate* shall mean a certificate signed by the President, any Vice President or any Assistant Vice President of the Company.

*Opinion of Counsel* shall mean an opinion in writing signed by legal counsel who shall be satisfactory to the Trustee and who may be an employee of the Company or the Lessee. The acceptance by the Trustee of, and its action on, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

*Payment Date* shall have the meaning specified in Section 2.02.

*Principal Payment Commencement Date* shall mean (a) July 1, 1971, with respect to Trust Certificates originally issued prior to June 29, 1971, (b) January 1, 1972, with respect to Trust Certificates originally issued on June 29, 1971, and (c) July 1 1972, with respect to Trust Certificates originally issued after June 29, 1971.

*Purchaser* shall mean each Purchaser named in Annex I to the Finance Agreement and *Purchasers* shall mean all such Purchasers.

*Request* shall mean a written request for the action therein specified received by the Trustee at least two Business Days prior to the time the action requested thereby is to be taken and signed on behalf of the Company by the President, any Vice President or any Assistant Vice President of the Company.

*Trust Certificates* shall mean American Computer Leasing Corporation 9¾% Equipment Trust Certificates, Due 1977, issued hereunder.

*Trust Equipment* shall mean all Equipment at any time subject to the terms of this Agreement.

*Trustee* shall mean The Provident Bank, a banking corporation organized under the laws of Ohio, and, subject to the provisions of Article Eight, any successor as trustee hereunder.

The words *herein*, *hereof*, *hereby*, *hereto*, *hereunder* and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

## ARTICLE TWO

### TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. *Issuance of Trust Certificates.* The Company shall forthwith deposit with the Trustee an amount equal to the proceeds of the sale of the Trust Certificates, but not less than the aggregate principal amount thereof.

Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates in the aggregate principal amount so sold.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section shall not exceed the sum of \$2,360,000, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

SECTION 2.02. *Interests Represented by Trust Certificates; Interest; Maturity.* Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder and shall have a final maturity on the Maturity Date. The Trust Certificates will bear interest from the date thereof, payable on January 1 and July 1 of each year commencing on the First Interest Payment Date in respect thereof, at the rate of  $9\frac{3}{4}\%$  per annum, with interest payable on overdue principal and interest as set forth in the Trust Certificates. The first instalment of principal of the Trust Certificates shall be payable on the Principal Payment Commencement Date in

respect thereof, and subsequent instalments shall be payable semi-annually thereafter on each January 1 and July 1 to and including the Maturity Date in respect thereof, each such date being hereinafter called a Payment Date. The principal amount of the Trust Certificates payable on each of the 12 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 12 instalments of principal and interest will completely amortize the obligations of the Company under the Trust Certificates, except that the first instalment of principal of Trust Certificates originally issued prior to June 29, 1971, shall be computed as if interest were payable for a full six months' period. The Company will furnish to the Trustee and each Purchaser a schedule showing the respective amounts of principal and interest which shall be payable on each Payment Date. A copy of each such schedule shall be attached to and made a part of the Trust Certificate to which it relates.

The principal of and interest on the Trust Certificates shall be payable at the Corporate Trust Office, in such coin or currency of the United States of America as, at the time payable, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of the preceding sentence of this paragraph, in the case of payments of principal and interest to be made on a Trust Certificate (other than final payment of principal), upon request and deposit with the Trustee of an agreement of the holder of such Trust Certificate (the responsibility of such holder to be satisfactory to the Company) obligating such holder, prior to any transfer or other disposition thereof, to surrender the same to the Trustee for notation thereon of the instalments of principal amount represented thereby theretofore paid in whole or in part, the Trustee will mail its check on the Business Day preceding the date each such payment is due to such registered holder at his address shown on the registry books maintained by the Trustee; *provided, however*, that this sentence shall not apply to any Purchaser so long as such Purchaser is a holder of Trust Certificates,

and the Trustee shall make payments of principal and interest to each Purchaser at its "home office" address set forth in Annex I to the Finance Agreement.

SECTION 2.03. *Form of Trust Certificates.* The Trust Certificates shall be in substantially the form hereinbefore set forth.

SECTION 2.04. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of its President, one of its Vice Presidents or one of its Assistant Vice Presidents and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of one of its Assistant Secretaries. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had then been such officer of the Trustee.

SECTION 2.05. *Characteristics of Trust Certificates.*

(a) The Trust Certificates: shall be registered, as to both principal and interest, in the name of the holder; shall be (i) transferable on the books of the Trustee in whole or in part and (ii) exchangeable for Trust Certificates of the same Maturity Date of other denominations of equal aggregate outstanding principal amount, upon presentation and surrender thereof for registration of transfer or exchange at the Corporate Trust Office, accompanied, in the case of registration of transfer, by appropriate instruments of transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee, *provided, however,* that no Trust Certificate shall be issued in a principal amount less than \$10,000 except in the case of the transfer or exchange of a Trust Certificate which at the time is in an unpaid principal amount

of less than \$10,000; each Trust Certificate shall be dated as of the date of issue unless issued in exchange for another Trust Certificate or Certificates bearing unpaid interest from an earlier date, in which case they shall be dated as of such earlier date; and each Trust Certificate shall entitle the registered holder to interest from the date thereof. The Trustee shall, if any prepayment shall theretofore have been made pursuant to Section 3.01 or 4.07, attach to each Trust Certificate issued upon registration of transfer or exchange a revised schedule of payments of principal and interest as provided in Section 3.01 and 4.07.

(b) Anything contained herein to the contrary notwithstanding, the parties hereto may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

(c) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and registration of transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

(d) For any registration, registration of transfer or exchange, the Trustee shall require payment by the person requesting same of a sum sufficient to reimburse it for any governmental charge connected therewith.

(e) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange for, or upon the registration of transfer of the whole or any part, as the case may be, of one or more other Trust Certificates, shall carry all the rights to principal and to interest accrued and unpaid and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, the Trust Certificates shall be so dated that neither gain nor loss in interest or principal shall result from such exchange, substitution or registration of transfer.

(f) The Trustee shall not be required to issue, register the transfer of or exchange any Trust Certificates for a period of ten Business Days next preceding any interest payment date.

SECTION 2.06. *Replacement of Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date and Maturity Date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The applicant for a new Trust Certificate pursuant to this Section shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish such reasonable security or indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions, to the extent permitted by law, are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

### ARTICLE THREE

#### ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 3.01. *Acquisition and Exclusion of Equipment.* The Company shall sell, assign and transfer to the Trustee, as Trustee for the holders of the Trust Certificates, security title to all the Trust Equipment described in Schedule I hereto; *provided, however*, that any Equipment not accepted pursuant to Section 4.02 and settled for pursuant to this Article Three on or before December 28, 1971 (herein

called the Cut-Off Date), shall be excluded from this Agreement and not included in the term Trust Equipment. In the event of any such exclusion, the Company and the Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Trust Equipment theretofore accepted and settled for hereunder.

SECTION 3.02. *Payment of Deposited Cash.* On each Closing Date (as defined in the Finance Agreement) the Trustee shall (subject to the provisions of Section 3.04 and the Company's making payment as contemplated by the provisions of Section 3.03) pay, upon Request, to the Manufacturer out of Deposited Cash then held by the Trustee, an amount not in excess of 80% of the aggregate Cost of the Trust Equipment which shall have become subject as of such Closing Date to the terms and provisions hereof as provided in Section 4.02, as specified in the certificate furnished to the Trustee pursuant to Section 3.04(b) except that with respect to the Closing Date occurring prior to June 29, 1971, the Trustee shall make such payment, upon Request, to the Company.

SECTION 3.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 3.02 hereof with respect to any Trust Equipment, but subject to the provisions of Section 3.2 of the Manufacturing Agreement, it will pay to the Manufacturer that portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.02 hereof. It is understood and agreed, however, that, as provided in Section 1 of the Manufacturing Agreement, unless the Company shall otherwise agree the total Cost of the Trust Equipment shall not exceed \$2,941,400.

SECTION 3.04. *Supporting Papers.* The Trustee shall not pay out any Deposited Cash pursuant to Section 3.02 with respect to any Trust Equipment unless the Trustee shall have received, in form and substance satisfactory to it and its counsel:

- (a) one or more duly executed Certificates of Acceptance (as defined in the Lease) with respect to such Trust Equipment stating that the Trust Equipment described and specified therein

by number or numbers has been delivered and has been marked in accordance with the provisions of Section 4.06 hereof;

(b) an invoice or invoices from the Company and a Lessee's Certificate which shall state that such Trust Equipment is Equipment as herein defined (having been first put into service no earlier than the date of delivery to and acceptance by the Lessee, as agent for the Trustee) and that the amount specified therein is the actual cost of such Trust Equipment, together with evidence of payment of the amount to be paid to the Manufacturer pursuant to Section 3.03 hereof;

(c) a bill or bills of sale of such Trust Equipment from the Company to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that at the time of sale the Company had legal title to the Trust Equipment described therein and good and lawful right to sell such Trust Equipment and that the title to such Trust Equipment is free from all claims, liens, security interests and other encumbrances of any nature except as created by this Agreement or as permitted by Section 6.01 hereof and except for the rights of the Lessee under the Lease;

(d) an Officer's Certificate stating that the amount specified in the invoices referred to in subparagraph (b) hereof is correct and that the payment under Section 3.03 hereof has been made to the Manufacturer;

(e) an opinion of counsel for the Lessee and Manufacturer, dated the date of such payment, addressed to the Trustee to the effect that:

(i) the Lessee is a corporation legally incorporated and validly existing, in good standing under the laws of Virginia, with full corporate power to enter into the Lease, the Manufacturing Agreement, the Equipment Purchase Agreement and the Acknowledgment;



(ii) the Lease, the Equipment Purchase Agreement, the Manufacturing Agreement and the Acknowledgment have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding agreements enforceable in accordance with their respective terms except as enforcement of the same may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally from time to time in effect;

(iii) the Lease has been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no other filing, recording or depositing is necessary to protect the Company's title to the Equipment in the United States of America;

(iv) no approval is required from any public regulatory body with respect to the entering into or performance of the Lease or the Acknowledgment, or all such approvals (which shall be specifically described) have been obtained;

(v) the entering into and performance of the Lease and the Acknowledgment will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or other agreement or instrument to which the Lessee is a party or by which it may be bound or contravene any provision of law, statute or regulation to which the Lessee is subject or any judgment, decree, franchise, order or permit applicable to the Lessee; and

(vi) the Trust Equipment settled for on such Closing Date has come under and is subject to the Lease;

(f) one or more duly executed Schedules (as defined in the Lease) with respect to such Trust Equipment causing such Trust Equipment described therein to become subject to the terms and conditions of the Lease as required by Section 2 of the Lease.

(g) a signed copy, addressed to the Trustee, of the opinion of Messrs. Cravath, Swaine & Moore required under Paragraph 5(a) of the Finance Agreement.

(h) a signed copy addressed to the Trustee, of the opinion of Messrs. Keating, Muething & Klekamp required by Paragraph 5(b) of the Finance Agreement.

#### ARTICLE FOUR

##### LEASE OF TRUST EQUIPMENT TO THE COMPANY; LIMITATION OF LIABILITY

SECTION 4.01. *Lease of Trust Equipment.* The Trustee does hereby let and lease to the Company its security title and interest in and to each unit of Trust Equipment accepted hereunder prior to June 29, 1971, from and after the date of acceptance thereof hereunder to January 1, 1977, its security title and interest in and to each unit of Trust Equipment accepted hereunder on June 28, 1971, from and after the date of acceptance thereof hereunder to July 1, 1977, and its security title and interest in and to each unit of Trust Equipment accepted hereunder after June 29, 1971, from and after the date of acceptance thereof hereunder to December 29, 1977.

SECTION 4.02. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be accepted by the Company under the Manufacturing Agreement as evidenced by a Lessee's Certificate referred to in Section 3.04(a) hereof, the same shall be deemed accepted hereunder and shall, *ipso facto* and without further instrument or lease, transfer or acceptance pass under and become subject to all the terms and provisions hereof.

SECTION 4.03. *General Limitation of Liability.* Notwithstanding any other provisions of this Agreement, including, without limitation, Articles Five and Six hereof, it is understood and agreed by the Trustee on behalf of itself and the holders of the Trust Certificates that all payments to be made by the Company under and pursuant to this Agreement (other than the payments called for by Section 3.03 hereof, the rentals required under Section 4.04(1) hereof

any indemnity required under Section 4.09 hereof), shall be made only from the income and proceeds from the Trust Equipment. As used herein the term "income and proceeds from the Trust Equipment" shall mean (i) if an Event of Default (as defined in Section 5.01 hereof) shall have occurred and while it shall be continuing, all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Section 4.07 hereof) paid for or with respect to the Trust Equipment pursuant to the Lease as are indefeasibly received by the Company at any time after any such Event of Default and during the continuance thereof and (ii) at any other time only that portion of the amounts referred to in the foregoing clause (i) or otherwise payable to the Company pursuant to the Lease as are indefeasibly received by the Company and as shall equal the rental payments specified in the first paragraph of Section 4.04 then or on the next payment date due and payable by the Company on the date such amounts received by the Company were required to be paid to it pursuant to the Lease or as shall equal any other payment (including payments in respect of Casualty Occurrences) then due and payable under this Agreement; it being understood that "income and proceeds from the Trust Equipment" shall in no event include amounts referred to in the foregoing clause (i) which were received by the Company prior to the existence of such an Event of Default which exceeded the amounts required to make the rental payments specified in the first paragraph of Section 4.04 then or on the next payment date due and payable by the Company on the date on which amounts with respect thereto received by the Company were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Trustee to proceed against the Trust Equipment as provided for herein for the full unpaid principal amount of the Trust Certificates and interest thereon.

SECTION 4.04. *Rental Payments.* The Company hereby accepts the lease of the Trustee's security title and interest in and to all the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rental hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment and notwithstanding that any of the Trust Certificates shall have been acquired by the Company or any Affiliate of the Company or shall not have been presented for payment):

(1) from time to time upon demand of the Trustee, the necessary and reasonable expenses of the trust hereby created, including compensation and expenses of the Trustee provided for herein;

(2) from time to time upon demand of the Trustee any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust, or upon or on account of this Agreement, which the Trustee as such may be required to pay;

(3) (a) the amounts of the interest payable on the Trust Certificates, when and as the same shall become due and payable, and (b) interest, at the rate of 10% per annum from the due date, upon the amount of any instalments of interest or principal payable under this and the following subparagraph which shall not be paid when due, to the extent legally enforceable; and

(4) the instalments of principal on the Trust Certificates when and as the same shall become due and payable (whether upon the date of maturity thereof or by declaration or otherwise).

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to

pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America or of any state, county, municipality or other taxing authority thereof to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge pursuant to subparagraph (2) of this Section 4.04 so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee the rights or interests of the Trustee or of the holders of the Trust Certificates may be materially endangered thereby.

SECTION 4.05. *Termination of Lease.* It is understood that the transfer to the Trustee of security title to the Trust Equipment pursuant to this Agreement is being made solely to secure the performance by the Company of its obligations under this Agreement and that beneficial ownership in and to the Trust Equipment shall be and remain in the Company subject to compliance by the Company with all of its obligations under this Agreement. Accordingly, after all payments due or to become due from the Company hereunder shall have been completed and fully made to or for the account of the Trustee and the Company shall have performed all of its other obligations hereunder, (1) such payments shall be deemed to represent the discharge in full of the Trustee's interest in the Trust Equipment at such time, (2) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (3) full title to all the Trust Equipment shall vest in the Company and (4) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's full title to all the Trust Equipment and the Company's full right, title and interest as lessor under the Lease under the laws of any jurisdiction; *provided, however*, that until that time the Trustee shall retain a security interest in and to all the

Trust Equipment, notwithstanding the possession and use thereof by, and the lease of the Trust Equipment to, the Company pursuant to the terms of this Agreement.

SECTION 4.06. *Marking of Trust Equipment.* The Company agrees that it will cause each unit of the Trust Equipment to be kept numbered with the identifying number set forth in Schedule I hereto and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of such unit in letters not less than three-eighths inch in height, the following words:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY  
AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT,  
SECTION 20c

or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Trustee to such unit and the rights of the Company and the Trustee under this Agreement. The Company will not place or permit any unit of the Trust Equipment to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof, *provided, however*, that, if any unit of Equipment shall be in service pursuant to the terms of the Lease at the time such unit is transferred to the Trustee hereunder, the Company agrees to cause such unit to be so marked as soon as practicable thereafter. The Company will replace or cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of the Trust Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Trustee by the Company and filed, recorded or deposited in all public offices where this Agreement will have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on the units of

the Trust Equipment as a designation that might be interpreted as a claim of full legal ownership; *provided, however*, that the Company may cause the Trust Equipment to be lettered with the names, initials or other insignia customarily used by the Lessee on railroad equipment used by it of the same or a similar type for convenience of identification of its right to use the Trust Equipment under the Lease, and the Trust Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Company therein.

SECTION 4.07. *Maintenance of Trust Equipment; Casualty Occurrences; Annual Report.* The Company agrees that it will maintain or cause to be maintained and keep or cause to be kept all the Trust Equipment in good order and repair at no cost or expense to the Trustee, unless and until it becomes worn out, lost, stolen, completely destroyed or damaged beyond economic repair, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called a Casualty Occurrence).

Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence the Company shall, promptly after it is informed of a Casualty Occurrence under the Lease, notify the Trustee in writing with respect thereto. On the Business Day preceding the January 1 or July 1 next succeeding such notice by the Company (or, in the event such January 1 or July 1 shall occur within 15 days after notice of such Casualty Occurrence is given by the Lessee to the Company, on the Business Day preceding the following January 1 or July 1) the Company shall deposit with the Trustee an amount in cash equal to the value of such unit as of such January 1 or July 1 and, upon such payment, the security title of the Trustee to such unit shall terminate and full title to such unit shall vest in the Company. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such Casualty Occurrence. For all purposes of this paragraph, value shall be set forth in an Officer's Certificate and shall be determined as follows (and the manner of such determination shall be set forth in such Officer's Certificate):

The value of any unit of Trust Equipment having suffered a Casualty Occurrence shall be deemed to be 80% of the Cost thereof as theretofore certified to the Trustee, less an amount equal to the aggregate of payments of rental theretofore made pursuant to Section 4.04(4) applicable to such unit. Rentals paid pursuant to Section 4.04(4) shall be deemed to be applied *pro rata* to each unit on each rental payment date in the same proportion as the Cost of such unit bears to the aggregate Cost of all units of Trust Equipment hereunder on such date.

Cash deposited with the Trustee pursuant to this Section 4.07 shall be applied to the *pro rata* prepayment on such date of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount represented by each such instalment) issued in respect of such units, each of the holders of such Trust Certificates to share proportionately in such prepayment. The Company will promptly furnish to the Trustee and each of the holders of such outstanding Trust Certificates a revised schedule of payments of principal thereafter to be made calculated as provided in Section 2.02.

On or before March 1 in each year, commencing with the year 1972, the Company will furnish or cause to be furnished to the Trustee, in such number of counterparts or copies as may reasonably be requested, an accurate statement (1) showing as of the preceding December 31, the amount, description and numbers of all units of the Trust Equipment that may have suffered a Casualty Occurrence whether by accident or otherwise during the preceding calendar year (or since the date of this Agreement in the case of the first such statement), and such other information regarding the condition and state of repair of Trust Equipment as the Trustee may reasonably request, (2) identifying the units of Trust Equipment then subject to the Lease, and (3) stating that, in the case of all units of Trust Equipment repaired or repainted during the period covered by such statement, the markings required by Section 4.06 have been preserved or replaced.

SECTION 4.08. *Possession of Trust Equipment.* So long as the Company shall not be in default under this Agreement, the Company



shall be entitled to the possession and use of the Trust Equipment and also to enter into the Lease which shall be subject and subordinate to this Agreement and to permit the Trust Equipment to be used as provided therein; *provided, however*, that the Lease shall forthwith be assigned to the Trustee as security for the obligations of the Company hereunder pursuant to the Assignment.

The Company may not assign and/or transfer any or all of its rights under this Agreement and/or any or all of its rights to any of the Trust Equipment to any person, without the consent of all holders of the Trust Certificates.

SECTION 4.09. *Compliance With Laws and Rules; Additions; Indemnity.* The Company covenants and agrees to comply in all respects with all laws of the jurisdictions in which operations involving any unit of the Trust Equipment may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of any legislative, executive, administrative or judicial body or officer exercising any power or jurisdiction over any unit of the Trust Equipment, to the extent such laws and rules affect the operations or use of such unit; and the Company agrees to cause to be indemnified and held harmless the Trustee from any and all liabilities that may arise from any infringement or violation of any such laws or rules by the Company, or the Company's employees, or any other person. In the event that such laws or rules require the alteration of any such unit of the Trust Equipment, the Company will cause such unit to be conformed therewith and will cause the same to be maintained in proper condition or operation under such laws and rules; *provided, however*, that the Company or the Lessee may in good faith contest the validity or application of any such law or rule, in any reasonable manner which does not in the opinion of the Trustee adversely affect the property or rights of the Trustee or of the holders of the Trust Certificates hereunder.

Any and all additions to any unit of the Trust Equipment and any replacements thereto and of parts thereof made by the Company or the Lessee shall constitute accessions to such unit and, without cost or

expense to the Trustee, there shall immediately be vested in the Trustee the same security interest in such accessions as the security interest of the Trustee in such unit.

The Company agrees to cause to be indemnified and held harmless the Trustee against any charge or claim made against the Trustee, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Trustee may incur in any manner by reason of entering into or performing this Agreement, the Trust Certificates, any of the instruments referred to herein or contemplated hereby or which may arise in any manner out of the security ownership of any unit of the Trust Equipment while subject to this Agreement, and to cause to be indemnified and held harmless the Trustee against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of such unit of the Trust Equipment resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment of all other obligations under this Agreement or the termination of this Agreement.

SECTION 4.10. *Taxes.* All payments to be made by the Company hereunder will be free of expense to the Trustee for collection or other charges and will be free of expense to the Trustee with respect to the amount of any local, state or federal taxes (other than net income, gross receipts, excess profits and similar taxes imposed on the Trustee [except gross receipts taxes in the nature of or in lieu of sales taxes]), assessments or license fees (and any charges, fines or penalties in connection therewith) (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by, this Agreement or any of the instruments or agreements referred to herein or contemplated hereby or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Company assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Company will also pay or cause to be paid promptly all impositions which may be imposed

upon any unit of the Trust Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Trustee solely by reason of its security interest therein, and any and all impositions upon or on account of the trust created by this Agreement, or the instruments or agreements referred to herein or contemplated hereby (other than income and intangible taxes or taxes in lieu thereof imposed on the holder of any Certificate in respect of interest paid thereon or his ownership thereof), and will keep at all times all and every part of such unit free and clear of all impositions which might in any way affect the security of the Trustee or result in a lien upon or security interest upon such unit and will supply the Trustee with a receipt or other evidence of such payment satisfactory to the Trustee; *provided, however*, that the Company shall be under no obligation to pay any impositions so long as it or the Lessee is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Trustee, adversely affect the property or rights of the Trustee hereunder. If any impositions shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee, on presentation of invoice therefor; *provided, however*, that the Company shall not be obligated to reimburse the Trustee for any impositions so paid unless the Trustee shall have been in the opinion of its counsel legally liable with respect thereto, or unless the Company shall have approved the payment thereof.

In the event any reports with respect to impositions are required to be made on the basis of individual units of the Trust Equipment the Company will either make or cause to be made such reports in such manner as to show the security interest of the Trustee in such units or will notify the Trustee of such requirement and will make or cause to be made such reports in such manner as shall be satisfactory to the Trustee.

In the event that, during the continuance of this Agreement, the Company becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 4.10, such liability shall continue, notwithstanding the expiration of the term of this Agreement, until all such impositions are paid or reimbursed by the Company.

## ARTICLE FIVE

## EVENTS OF DEFAULT AND REMEDIES

SECTION 5.01. *Events of Default.* The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the rental payable hereunder for more than 15 days after the same shall have become due and payable, or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or under the Lease, or

(c) the Company shall, for more than 30 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, or

(d) a decree or order shall have been entered by a court of competent jurisdiction adjudging the Company bankrupt or insolvent or approving as properly filed a petition seeking reorganization or arrangement of the Company under the Bankruptcy Act, or any other federal or state law relating to bankruptcy or insolvency, or appointing a receiver for the Trust Equipment or decreeing or ordering the winding up or liquidation of the affairs of the Company, and any such decree or order shall remain in force undischarged and unstayed for a period of 60 days, or

(e) the Company shall institute proceedings to be adjudicated bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall file a petition or answer or consent seeking reorganization or relief under the Bankruptcy Act or any other federal or state law relating to bankruptcy or insolvency or shall consent to the filing of any such petition or shall consent to the appointment of a receiver for the Trust Equipment or shall make an assignment for the benefit of

creditors or shall admit in writing its inability to pay its debts generally as they become due, or action shall be taken by the Company in furtherance of any of the aforesaid purposes, or

(f) an event of default shall occur under § 17 of the Lease, or

(g) the Lessee shall default in the observance or performance of any of the covenants and agreements on its part contained in the Lease (other than those relating to payment of any part of the rental provided in § 4 of the Lease) and such default shall continue for 15 days after the Trustee shall have demanded in writing performance thereof *unless* during such 15 day period the Company shall have cured or caused to be cured such default,

then, in any such case (herein sometimes called an Event of Default), if the same shall then be continuing, the Trustee in its discretion may, and upon the written request of the holders of not less than 20% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (except rentals required for the payment of interest accruing after the date of such declaration) payable by the Company as set forth in Section 4.04 and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the rate of 10% per annum, to the extent legally enforceable, on any portion thereof overdue.

In case one or more Events of Default shall happen, and if the same shall then be continuing, the Trustee in its discretion also may, and upon the written request of the holders of not less than 20% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 4.04(3) or (4) when and as the same shall have become due and payable hereunder, and such default shall have

continued for a period of 15 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company wherever situated the moneys adjudged or decreed to be payable, subject to the limitations of Section 4.03 hereof.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company under the Bankruptcy Act or any other applicable law, or in case a receiver or trustee shall have been appointed for the Trust Equipment, or in case of any other judicial proceedings relative to the Company or the Trust Equipment, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (except rentals required for the payment of interest accruing after the date of such declaration), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly

to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 5.02. *Remedies.* Neither the Trustee nor the Company shall have the right to terminate or impair the Lessee's possession or use of Trust Equipment subject to the Lease so long as the Lessee shall not be in default under the Lease. Subject to the preceding sentence, which qualifies this entire Agreement, upon the happening of any Event of Default the Trustee may by its agents enter upon the premises of the person having possession of the Trust Equipment and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease or otherwise contract for the use of the Trust Equipment or any part thereof; or the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company and the

principal of all the outstanding Trust Certificates, as provided in Section 5.01) sell the Trust Equipment or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of then outstanding Trust Certificates, all subject to any mandatory requirements of law applicable thereto. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. After the Trustee has fully exercised its remedies hereunder, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, or of principal and interest in respect of the Trust Certificates, and the Company shall be and remain liable for the same (subject to the limitations of Section 4.03 hereof) until such sums have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement (other than interest not then accrued), whether or not they shall have then matured.

SECTION 5.03. *Application of Proceeds.* If the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02, all payments made by the Company to the Trustee and the proceeds of any



judgment collected from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or a part thereof, or interest thereon) shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest at the rate of 10% per annum to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the rate of 10% per annum to the extent legally enforceable from the date of default, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and interest.

After all such payments shall have been made in full, the security title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof (hereinafter called the Deficiency) the Company agrees to pay the amount of the Deficiency to the Trustee, upon demand; and if the Company shall fail to pay the Deficiency, the Trustee may bring suit therefor and shall be entitled to recover judgment therefor against the Company, all the foregoing being subject to the limitations of Section 4.03 hereof. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 5.04. *Waivers of Default.* Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 5.01, the holders of a majority in aggregate principal amount of the Trust Certificates at the

time outstanding may on behalf of the holders of all the Trust Certificates waive any past default and its consequences, except a default in the payment of any instalment of rental payable pursuant to Section 4.04(3) or (4), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Subject to the limitations of Section 4.03 hereof, if at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, all arrears of rent (with interest at the rate of 10% per annum upon any overdue instalments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (otherwise than by such declaration or declarations) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment (or the making of any agreement for such sale or lease), and every other default shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 5.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder subject to the limitations of Section 4.03 hereof.

The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

SECTION 5.06. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at the expense of the holders promptly cause such Trust Equipment to be drawn to such point or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 5.07. *Trustee to Give Notice of Default.* The Trustee shall give to the holder of the Trust Certificates notice of each default hereunder known to the Trustee, within 30 days after it has actual knowledge of the same, unless remedied or cured before the giving of such notice.

SECTION 5.08. *Control by Holders of Trust Certificates.* The holders of a majority in aggregate principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; *provided, however*, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel other than counsel for the Company that the action so directed may not lawfully be taken.

SECTION 5.09. *Remedies Cumulative; Subject to Mandatory Requirements of Law.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity; and such remedies so provided in this Agreement shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

SECTION 5.10. *Transfer of Trust Certificates to the Company.* At any time after the occurrence and during the continuation of an Event of Default and upon request of the Company made to each holder of an outstanding Trust Certificate, each holder of a Trust Certificate agrees that, unless the holders of a majority in aggregate principal amount of the Trust Certificates shall have waived such Event of Default, it will, upon receipt from the Company of an amount equal to the aggregate unpaid principal of and accrued interest on all Trust Certificates then held by such holder plus all other sums then due and payable to such holder hereunder or under such Trust Certificates, forthwith sell, assign, transfer and convey to the Company all of the right, title and interest of such holder in and to the Trust Equipment, this Agreement, all Trust Certificates then held by such holder, the Finance Agreement, the Lease, the Assignment and the Acknowledgment. Anything contained in this Section to the contrary notwithstanding, no holder of any outstanding Trust Certificate shall have any obligation to sell such Trust Certificate to the Company unless the event constituting the Event of Default shall also constitute an Event of Default under the Lease. If the Company shall request, such holder will comply with all the provisions of Section 2.05 to enable new Trust Certificates of the same Maturity Date to be issued to the Company in such denominations as the Company shall request. All charges and expenses required pursuant to Section 2.05 in connection with the issuance of any new Trust Certificates shall be borne by the Company. In the event that the Company shall have acquired all the Trust

Certificates in the manner contemplated by this Section and all amounts owing to the Trustee pursuant to this Agreement shall have been paid, the Trustee shall not exercise any remedies under this Agreement, the Assignment or the Lease without the approval of the Company.

## ARTICLE SIX

### ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien, charge or security interest upon or against any of the Trust Equipment prior to or *pari passu* with the security title of the Trustee; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not adversely affect the rights or interests of the Trustee or the holders of the Trust Certificates and the Company and the Lessee shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 6.02. *Recording.* The Company will at its own expense, promptly after the execution and delivery of this Agreement, the Lease and the Assignment (including the Acknowledgment), and each supplement or amendment hereto or thereto, respectively, cause the same to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection, to the satisfaction of the Trustee, of the security title of the Trustee to the Trust Equipment and the rights of the holders of the Trust Certificates, or for the purpose of carrying out the intention of this Agreement.

Promptly after the execution and delivery of this Agreement and of the Assignment, and of each supplement or amendment hereto or thereto, the Company will furnish or cause to be furnished to the Trustee an Opinion of Counsel or Opinions of Counsel stating that, in the opinion of such counsel, such document has been properly recorded and filed so as effectively to protect the security title of the Trustee to the Trust Equipment and its interests in the Lease and its rights and the rights of the holders of the Trust Certificates hereunder and thereunder and reciting the details of such action.

SECTION 6.03. *Further Assurances.* The Company covenants and agrees from time to time at its expense to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

## ARTICLE SEVEN

### CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 7.01. *Evidence of Action Taken by Holders of Trust Certificates.* Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the Trust Certificates then outstanding may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 7.02. *Proof of Execution of Instruments and of Holding of Trust Certificates.* Proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer.

The ownership of Trust Certificates and the unpaid principal amount thereof may be proved by the register of such Certificates or by a certificate of the Trustee.

SECTION 7.03. *Trust Certificates Owned by Company.* In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates (other than those acquired by the Company in the manner required by Section 5.10) which are owned by the Company, the Lessee or by an Affiliate of the Company or the Lessee shall (unless all of the Trust Certificates are so owned) be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee actually knows are so owned shall be disregarded.

SECTION 7.04. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 7.02, revoke such action in so far as concerns such Trust Certificate. Except as aforesaid, any such action taken by the holder of any Trust

Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

## ARTICLE EIGHT

### THE TRUSTEE

SECTION 8.01. *Acceptance of Trust.* The Trustee hereby accepts the trust imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

SECTION 8.02. *Duties and Responsibilities of the Trustee.* In case an Event of Default has occurred which has not been cured and of which the Trustee has knowledge, the Trustee shall exercise such of the rights and powers vested in it by this Agreement and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically



set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made by it in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or that its action or inaction was contrary to the express provisions of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Agreement;

(d) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate, guaranty or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(e) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection

in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel and not contrary to any express provision of this Agreement;

(f) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby; and

(g) the Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

SECTION 8.03. *Application of Rentals; Responsibility of Trustee.* The Trustee covenants and agrees to apply the rentals received by it under Section 4.04 when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in Section 4.04.

The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified to its satisfaction by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the filing or recording, required under Section 6.02, of this Agreement or of any supplement hereto or statement of new identifying numbers.

SECTION 8.04. *Funds May be Held by Trustee.* Any money at any time paid to or held by the Trustee hereunder until paid out or invested by the Trustee as herein provided need not be segregated in any manner except to the extent required by law and may be carried by the Trustee on deposit with its general banking department, and the Trustee shall not be liable for any interest thereon.

SECTION 8.05. *Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; Agents; Expenses; etc.* The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorney and agents as it shall appoint, and shall be answerable only for its own acts, and not for the acts of any co-trustee or separate trustee appointed under Section 8.09 hereof or for the acts of any attorney or other agent appointed by it with reasonable care.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of its duties hereunder, all of which shall (unless paid by some other person) be paid by the Company.

The Trustee may in its individual capacity own, hold and dispose of Trust Certificates.

Any moneys at any time held by the Trustee shall, until paid out or invested as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 8.06. *Resignation and Removal of Trustee; Appointment of Successor Trustee.*

(a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Company and to the registered holders of the Trust Certificates and such resignation shall take effect 30 days after the delivery thereof to the Company or upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in this Section.

(b) The Trustee may be removed at any time by an instrument in writing signed by the holders of a majority in principal amount of

the Trust Certificates then outstanding, delivered to the Trustee and the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority of the aggregate principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its Board of Directors shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the holders of Trust Certificates in the manner provided above. Every successor trustee appointed pursuant to this Section shall be a national bank or a bank or trust company incorporated under the laws of the United States of America or the State of Ohio and having a capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice to the holders of all outstanding Trust Certificates of each resignation or removal of the then Trustee and of each appointment by the Company of a successor trustee pursuant to this Section by mailing written notice of such event by first-class mail, postage prepaid.

**SECTION 8.07. *Acceptance of Appointment by Successor Trustee.***

Any successor trustee appointed as provided in Section 8.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon (unless such resignation shall have become effective earlier pursuant to Section 8.06(a)) the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights,

powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to each successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee by it or for its account to secure any amounts then due it pursuant to the provisions of Section 8.05.

SECTION 8.08. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, *provided* such corporation shall be qualified under the provisions of Section 8.06, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.09. *Appointment of Co-Trustees and Separate Trustees.* If at any time or times the holders of a majority in principal amount of the then outstanding Trust Certificates shall in writing request the Trustee and the Company, or the Trustee shall in writing request the Company, the Trustee and the Company shall execute and deliver all instruments and agreements necessary or proper to appoint another bank or trust company, either to act hereunder as co-trustee or co-trustees with respect to all or any of the Trust Equipment jointly with the Trustee or to act hereunder as separate trustee or trustees with respect to any such equipment, with such power and authority and entitled to the benefit of such provisions hereunder as shall be specified in the instrument of appointment. In the event the Company shall not have joined in the execution of such instruments and agree-

ments within 10 days after the receipt of a written request so to do from the Trustee or from the holders of a majority in principal amount of the then outstanding Trust Certificates, or in case an Event of Default shall have occurred and be continuing, the Trustee may act under the foregoing provisions of this Section 8.09 without the concurrence of the Company; and the Company hereby fully empowers the Trustee so to act and appoints the Trustee its agent and attorney to act for it under the foregoing provision of this Section 8.09 in either of such contingencies. Every co-trustee or separate trustee appointed hereunder shall be a national bank or a bank or trust company incorporated under the laws of the United States of America or any State thereof and having a capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the position of co-trustee or separate trustee upon reasonable or customary terms.

## ARTICLE NINE

### MISCELLANEOUS

SECTION 9.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto, the holders of the Trust Certificates and the assignees and/or transferees contemplated by the second paragraph of Section 4.08 any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates and such assignees and transferees.

SECTION 9.02. *Ohio Law Governs.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Ohio; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9.03. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 9.04. *Satisfaction of Obligations.* The obligations of the Company under Section 4.06, the first and last paragraphs of Section 4.07, Section 4.09, Section 4.10, Section 6.01 and Section 6.02 shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 8, 9, 10, 11, 12 and 14 of the Lease and subparagraph 5 of the Acknowledgment. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed by the Lessee such non-performance may constitute the basis for an Event of Default hereunder pursuant to Section 5.01.

SECTION 9.05. *Notices.* Except as otherwise expressly provided herein, all demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, 14 East Fourth Street, Cincinnati, Ohio, or such other address as may hereafter be furnished to the Trustee, in writing by the Company, (b) in the case of the Trustee, at its Corporate Trust Office, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 9.06. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.07. *Execution.* Although this Agreement is dated as of December 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9.08. *Applicable Laws.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

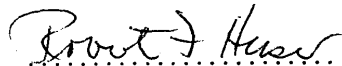
IN WITNESS WHEREOF, the Trustee and the Company have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

THE PROVIDENT BANK, as Trustee,

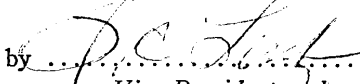
by   
Vice President.

[CORPORATE SEAL]

Attest:


  
Assistant Secretary. TRUST OFFICER

AMERICAN COMPUTER LEASING  
CORPORATION,

by   
Vice President and  
Treasurer.

[CORPORATE SEAL]

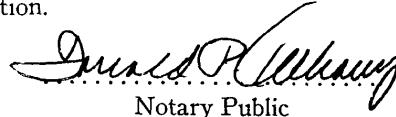
Attest:

  
Secretary.



STATE OF OHIO  
COUNTY OF HAMILTON } ss.:

On this 19<sup>th</sup> day of January, 1971, before me personally appeared James J. Ashburn, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE PROVIDENT BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

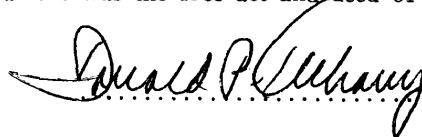
My commission expires

[NOTARIAL SEAL]

**DONALD P. KLEKAMP, Attorney at Law**  
Notary Public, State of Ohio  
**My commission has no expiration date**  
Section 147.03 R, O.

STATE OF OHIO  
COUNTY OF HAMILTON } ss.:

On this 19<sup>th</sup> day of January, 1971, before me personally appeared ~~Robert~~ C. LINTZ, to me personally known, who, being by me duly sworn, says that he is Vice President and Treasurer of AMERICAN COMPUTER LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[NOTARIAL SEAL]

**DONALD P. KLEKAMP, Attorney at Law**  
Notary Public, State of Ohio  
**My commission has no expiration date**  
Section 147.03 R, O.

**SCHEDULE I**

<u>Quantity</u>	<u>Type and Specifications</u>	<u>Cost</u>	<u>Identifying Numbers (both inclusive)</u>
350	50-ton Class O-26 box cars	\$1,170,400	SCL 11450- SCL 11799
350	50-ton Class KS-18 gondola cars	1,771,000	SCL 132100- SCL 132449

RAILROAD EQUIPMENT RECONSTRUCTION AGREEMENT

This RAILROAD EQUIPMENT RECONSTRUCTION AGREEMENT dated as of August 15, 1970, by and between SEABOARD COAST LINE RAILROAD COMPANY, a Virginia corporation (the "Railroad"), and AMERICAN COMPUTER LEASING CORPORATION, an Ohio corporation (the "Owner");

RECITALS:

The Owner is the owner of the railroad freight cars described in Schedule 1 hereto (collectively the "Equipment" and individually "Item of Equipment") which are to be reconstructed by the Railroad in accordance with the specifications therefor set forth in said Schedule 1 and duly approved by an authorized representative of the Owner by endorsement thereon (hereinafter, with such modifications therein as may be approved by the Owner of its authorized representative and the Railroad, called the "Specifications"); and the Owner proposes to pay for such reconstruction of the Equipment at the price, in the manner and upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter set forth, the Owner and the Railroad hereby agree as follows:

SECTION 1. Reconstruction of the Equipment. The Railroad agrees (i) to reconstruct the Equipment, in accordance with the Specifications, for the Owner, (ii) to number and mark each Item of the Equipment as specified by the Owner, and (iii) to deliver the Equipment to the Owner, as and when so reconstructed, marked and numbered, at the reconstruction price as set forth in said Schedule 1 or such other reconstruction price or prices as may be mutually agreed upon by the parties hereto and set forth in an amended Schedule 1, said reconstruction price not to exceed \$2,510,350. The design, quality and component parts of the Equipment as so reconstructed will conform to all Interstate Commerce Commission

and Department of Transportation requirements and specifications and to all interchange requirements of the Association of American Railroads reasonably interpreted by the Railroad as being applicable to railroad equipment of the character of the Equipment as so reconstructed as of the date of this Agreement.

SECTION 2. Delivery.

2.1 Place. The Owner will deliver the Equipment, or cause the Equipment to be delivered to the Railroad at such place or places as shall be mutually agreed upon by the Owner and the Railroad from time to time. The Railroad will deliver the reconstructed Equipment to an authorized representative of the Owner at the delivery point or points mutually agreed upon by the Owner and the Railroad in accordance with the delivery schedule set forth in Schedule 1.

2.2 Time. The obligation of the Railroad as to time of delivery of the reconstructed Equipment is subject, however, to delays resulting from acts of God, acts of Government such as embargoes, priorities, and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or any other cause beyond the reasonable control of the Railroad.

2.3 Outside Delivery Date. In the event that all Items of Equipment have not been reconstructed, delivered and accepted hereunder on or prior to December 29, 1971, this Agreement shall be deemed to apply only to such Items of Equipment as have been reconstructed, delivered and accepted on or prior to said date and, as used herein, the term reconstructed Equipment shall be deemed to mean only such Items of Equipment as have been reconstructed, delivered and accepted on or prior to said date and the Owner shall have no liability for any part of the reconstruction cost of any Item of Equipment not reconstructed, delivered, and accepted prior to December 29, 1971.

2.4 Inspection and Acceptance. The Owner agrees to appoint

and maintain an authorized representative or representatives at the place or places of delivery of the reconstructed Equipment, and to cause such representative or representatives; as and when reconstructed Equipment is tendered for delivery by the Railroad in accordance with Section 2 hereof, to inspect the same and, if such reconstructed Equipment is found to be in good order, to accept delivery thereof and to execute and deliver to the Railroad and to the Owner a Certificate of Acceptance acknowledging the delivery to and acceptance thereof by the authorized representative of the Owner (hereinafter called "Certificate of Acceptance"). From the time the Equipment is delivered to the Railroad until such delivery of the reconstructed Equipment, the responsibility and risk of loss with respect thereto shall be borne by the Railroad.

SECTION 3. Payment for Reconstruction.

3.1 Time of Payment. The Owner shall pay to the Railroad the reconstruction price of the reconstructed Equipment delivered to and accepted by the Owner pursuant to this Section 3:

(a) For all Items of Equipment so delivered and accepted on or prior to December 28, 1970, such payment shall be made on December 29, 1970; and

(b) For all Items of Equipment so delivered and accepted on or prior to June 28, 1971, such payment shall be made on June 29, 1971; and

(c) For all Items of Equipment so delivered and accepted after June 28, 1971, the earlier of (i) December 29, 1971, or (ii) the date on which reconstruction, delivery and acceptance of all Items of Equipment has been completed.

3.2 Conditions - Precedent. The Owner shall not be obligated to make the payments specified herein unless the Owner shall have first received, in form and substance satisfactory to the Owner, all of the following:

(a) Certificate or Certificates of Acceptance, of the character specified in Sections 1 and 2 of the Railroad Equipment Lease Agreement, dated as of

August 15, 1970, between the Owner, as Lessor,  
and the Railroad, as Lessee, with respect to  
such Items of Equipment;

(b) An Invoice or Invoices covering the  
reconstruction price of such Items of Equipment;  
provided, however, that notwithstanding the actual  
dates of acceptance of delivery of the reconstructed  
Items of Equipment, Invoices therefor shall be  
rendered only in respect of reconstructed Items  
of Equipment which shall have been delivered  
and accepted by the authorized representative  
of the Owner; and

(c) An opinion of counsel for the Railroad  
to the effect that this Agreement has been duly  
authorized, executed and delivered by the Railroad  
and constitutes a valid, legal and binding agreement  
of the Railroad enforceable in accordance with its  
terms.

SECTION 4. Warranty. The Railroad warrants that the Equip-  
ment will be reconstructed in accordance with the requirements, specifica-  
tions and standards set forth or referred to in Section 1 hereof and warrants  
the reconstructed Equipment will be free from defects in material, work-  
manship and design under normal use and service, the obligation of the  
Railroad under this Section being limited to making good at its plant any  
part or parts of any reconstructed Item of Equipment which shall, within  
one year after the delivery of such reconstructed Item of Equipment  
to the Owner, be returned to the Railroad with transportation charges  
prepaid and which examination by the Railroad shall disclose to its  
satisfaction to have been thus defective. This warranty is expressly in  
lieu of all other warranties, express or implied, and of all other  
obligations or liabilities on the part of the Railroad except for its  
obligations under Sections 1, 2, and 3 hereof and the Railroad neither  
assumes nor authorizes any person to assume for it any other liability.

in connection with the reconstruction of the Equipment and delivery of the reconstructed Equipment except as aforesaid. The Railroad further agrees with the Owner that the acceptance of any reconstructed Item of Equipment under Section 2 hereof shall not be deemed a waiver by the Owner of any of its rights under this Section.

SECTION 5. Notices. Any notice permitted or required to be given by either party hereto to the other shall be in writing and deemed to be properly served if delivered, or addressed and deposited in the United States certified mails, first-class postage prepaid, as follows:

If to the Railroad: Seaboard Coast Line Railroad Company  
Treasury Department  
P. O. Box 1620  
Richmond, Virginia 23213  
Attention: Leonard G. Anderson, Treasurer

If to the Owner: American Computer Leasing Corporation  
14 East Fourth Street  
Cincinnati, Ohio 45202  
Attention: Robert C. Lintz, Vice President  
and Treasurer

or delivered or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 6. Successors and Assigns. As used herein the terms the Railroad and Owner shall be deemed to include the successors and assigns of the Railroad and the Owner, provided, however, that no assignment by the Railroad or any assignee thereof shall subject any assignee to, or relieve the Railroad from, any of the obligations of the Railroad hereunder. Each party hereto may conclusively assume that there has been no assignment of the other party's rights under this Agreement unless and until it shall have been notified in writing of any such assignment by such assignor.

SECTION 7. Execution in Counterparts. This Agreement may

be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Railroad and the Owner have caused this Agreement to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested.

(Corporate Seal)

SEABOARD COAST LINE RAILROAD  
COMPANY

Attest:

J F Wallace  
Assistant Secretary

BY: Leonard S. Anderson  
RAILROAD

(Corporate Seal)

AMERICAN COMPUTER LEASING  
CORPORATION

Attest:

Annita W. Hines  
Secretary


BY: Robert C. Lintz  
Robert C. Lintz, Vice President & Treas.  
OWNER



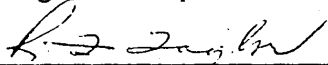
SCHEDULE 1  
TO RECONSTRUCTION AGREEMENT

Description of Equipment:	350 Class 0-26 box cars bearing identifying numbers in the Series SCL 621630 through SCL 623595, both inclusive and SCL 624000 through SCL 624499 both inclusive
Reconstruction Specifications:	Statement of General Repairs - Box dated June 3, 1970
Description of Reconstructed Units:	350 box cars bearing identifying numbers SCL 11450 through 11799, both inclusive
Total Reconstruction Price:	\$1,106,000
Delivery Schedule:	August 31, 1970 - December 29, 1971, both inclusive
Outside Delivery Date:	December 29, 1971
Deliver To:	Seaboard Coast Line Railroad Company (as designated by the Railroad)
Specifications Approved for Owner	

  
Authorized Representative of Owner - C. B. Blount, Jr.

  
Authorized Representative of Owner - J. H. Gwynes

  
Authorized Representative of Owner - J. A. Robertson

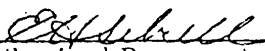
  
Authorized Representative of Owner - R. F. Taylor

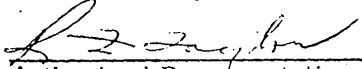
SCHEDULE 1  
TO RECONSTRUCTION AGREEMENT

Description of Equipment:	350 Class KS-18 gondola cars bearing identifying numbers in the Series SCL 693000 through SCL 694499, both inclusive
Reconstruction Specifications:	Statement of General Repairs - Gondola dated June 3, 1970
Description of Reconstructed Units:	350 Gondola cars bearing identifying numbers SCL 132100 through 132449, both inclusive
Total Reconstruction Price:	\$1,345,750
Delivery Schedule	August 31, 1970 - December 29, 1971, both inclusive
Outside Delivery Date:	December 29, 1971
Deliver To:	Seaboard Coast Line Railroad Company (as designated by the Railroad)

Specifications Approved for Owner

  
Authorized Representative of Owner - C. B. Blount, Jr.

  
Authorized Representative of Owner - E. H. Sebrell

  
Authorized Representative of Owner - R. F. Taylor

RAILROAD EQUIPMENT MASTER LEASE AGREEMENT

Dated as of August 15, 1970

By and Between

AMERICAN COMPUTER LEASING CORPORATION

as LESSOR

and

SEABOARD COAST LINE RAILROAD COMPANY

RAILROAD EQUIPMENT MASTER LEASE AGREEMENT

THIS RAILROAD EQUIPMENT MASTER LEASE AGREEMENT ("Lease") dated as of August 15, 1970, by and between AMERICAN COMPUTER LEASING CORPORATION, an Ohio corporation, (the "LESSOR") and SEABOARD COAST LINE RAILROAD COMPANY, a Virginia corporation (the "LESSEE");

WITNESSETH:

SECTION 1. DEFINITIONS

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Lease Agreement and shall be equally applicable to both the singular and the plural forms of the terms herein defined.

"Cars" shall mean the railroad freight cars described in Exhibit "A" attached hereto and made a part hereof, and as described in any Schedules which may be executed, from time to time, by the parties hereto, thereby becoming a part hereof.

"Casualty Occurrence" with respect to any Item of Equipment shall mean any of the following events

with respect to such Item of Equipment: (i) the loss, theft, or destruction thereof; or (ii) such Item of Equipment shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the Term (except for any requisition which by its terms does not exceed the remaining portion of the Term).

"Casualty Value" for an Item of Equipment as of any Rental Payment Date shall mean an amount determined by multiplying Lessor's Cost for such Item of Equipment by the percentage specified in Exhibit "B" hereto opposite such Rental Payment Date.

"Certificate of Acceptance" shall mean a certificate in substantially the form attached hereto as Exhibit "C" to be executed by the Lessee and delivered to the Lessor evidencing the Lessee's acceptance of delivery of an Item of Equipment.

"Commencement Date" shall mean (a) December 29,

1970, for all Items of Equipment accepted pursuant to Section 2 hereof on or prior to December 28, 1970;

(b) June 29, 1971, for all Items of Equipment accepted pursuant to Section 2 hereof on or prior to June 28, 1971; and (c) the earlier of (i) December 29, 1971, or (ii) the date on which reconstruction and delivery of all Items of Equipment to the Lessee have been completed as evidenced by the Certificates of Acceptance for all Items of Equipment accepted pursuant to Section 2 hereof after June 28, 1971.

"Equipment" shall mean all reconstructed Cars delivered and accepted under the Reconstruction Agreement.

"Event of Default" shall mean any of the events referred to in Section 17 hereof.

"Fixed Rent" shall mean the rental specified in Paragraph 4.1 hereof.

"Item of Equipment" shall mean a reconstructed Car delivered and accepted under the Reconstruction Agreement.

"Lessors' Cost" shall mean the sum of (a) the

purchase price of the Cars as specified in the Purchase Agreement, (b) the cost of reconstruction of the Cars as specified in the Reconstruction Agreement, and (c) any taxes, delivery charges or other amounts paid by the Lessor pursuant to the Purchase Agreement or the Reconstruction Agreement. The aggregate of Lessor's Cost for the Equipment shall not exceed Three Million Dollars (\$3,000,000).

"Purchase Agreement" shall mean that certain agreement between the Lessor and the Lessee dated as of August 15, 1970, providing for the purchase by the Lessor from the Lessee of the Cars.

"Reconstruction Agreement" shall mean that certain agreement between the Lessor and the Lessee dated as of August 15, 1970, providing for the reconstruction by the Lessee of the Cars.

"Rental Payment Date" for an Item of Equipment shall mean the first semi-annual anniversary of the

Commencement Date for such Item of Equipment and each succeeding semi-annual anniversary thereof to and including the last day of the Term for such Item of Equipment. Provided that, with respect to that Equipment accepted subsequent to June 29, 1971, in the event the final Commencement Date intended under this Lease occurs prior to December 29, 1971, a proportionate rental payment will be made on said final Commencement Date in the manner set forth in Section 4.1.

"Schedule" shall mean a record in the form of Exhibit "D", executed or to be executed by Lessor and Lessee with respect to each Item of Equipment which becomes subject to this Lease containing information sufficient to identify the Equipment, and further containing a statement to the effect that it is executed pursuant to this Lease and that the terms are incorporated therein by reference.

"Secured Party" shall mean any lender which has made a non-recourse loan to the Lessor and has received



as security therefor an assignment of the rentals payable under this Lease.

"Supplemental Rent" shall mean all amounts, liabilities, and obligations which the Lessee assumes or agrees to pay hereunder to the Lessor or others, including Casualty Value payments, but excluding Fixed Rent.

"Term" shall mean, in the case of each Item of Equipment, the term for which such Item of Equipment is leased hereunder pursuant to Section 3 hereof, subject only to earlier termination as provided in Section 13 hereof.

SECTION 2. DELIVERY AND ACCEPTANCE OF EQUIPMENT

The Lessor will cause each Item of Equipment to be tendered to the Lessee on the line of railroad of the Lessee at the point or points mutually agreed upon by the Lessor and the Lessee. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and

deliver to the Lessor a Certificate of Acceptance, whereupon such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee. At that time also, the parties will execute a Schedule(s), thereby causing the Items of Equipment accepted on each of the Commencement Dates to become subject to all the terms and conditions of this Lease.

SECTION 3. TERM

The Term for each Item of Equipment shall commence on the Commencement Date for such Item of Equipment and shall continue for Six (6) years, except that, with respect to that Equipment accepted subsequent to June 29, 1971, the Term for said Equipment shall extend to a date Six (6) years from December 29, 1971.

SECTION 4. RENTAL

4.1 Fixed Rent. The Lessee hereby agrees to pay the Lessor Fixed Rent for each Item of Equipment throughout the Term for such Item of Equipment, payable in arrears in Twelve (12) semi-annual installments, each in an amount equal to 10.1952% of Lessor's Cost therefor, payable on each Rental Payment Date; provided that, with respect to each Item of Equipment accepted subsequent to June 29, 1971, should the final Commencement Date intended under this Lease occur prior to December 29, 1971, Lessee agrees to pay a proportionate Rental Payment on December 29, 1971, said proportionate Rental Payment to be equal to the proportion of the Six (6) month rental period that shall have elapsed since final Commencement Date.

4.2 Supplemental Rent. The Lessee also agrees to pay to the Lessor, or to whomsoever shall be entitled thereto, any and all Supplemental Rent promptly as the same shall become due and owing, and in the event of any failure on the part of the Lessee to pay any Supplemental Rent, the Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of non-payment of Fixed or Interim Rent. The Lessee will also pay to the Lessor, no later than Ten (10) days after demand, as Supplemental Rent, to the extent permitted by applicable law, interest at the rate of Nine Per Cent (9%) per annum (computed on the basis of a 360-day year of Twelve [12] 30-day months) on any part of any installment of Fixed Rent not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Rent not paid within Ten (10) days after demand by the Lessor for the period from the date of demand until the same shall be paid.

4.3 Payment of Rent. All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor at 14 East Fourth Street, Cincinnati, Ohio 45202, or at such other place as the Lessor or its assigns shall specify in writing.

4.4 Obligation to Pay Rent. The Lease is a net lease to the Lessor, and the Lessee shall not be entitled to any abatement of Rent or reduction thereof, including, but not limited to, abatements or reductions resulting from any present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Lessor or the Lessee be otherwise affected by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 13 hereof, or until, pursuant to

Section 16 hereof, the Equipment is placed and ready for delivery to the Lessor on the Lessee's lines, or leaves the Lessee's line for off-line delivery to the Lessor. Lessee further waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease, or the Equipment, or any part thereof, or to any abatement, suspension, deferment, diminution or reduction of rent on account of any such occurrence.

SECTION 5. TITLE TO THE EQUIPMENT

5.1 Title. The Lessor shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and the possession and use thereof by the Lessee.

5.2 Identification of Equipment.

(a) The Lessee will cause each Item of Equipment to be kept numbered with its identifying number as set forth in Exhibit "A" hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than One (1) inch in height as follows:

"Leased from American Computer  
Leasing Corporation"

(b) Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 6. DISCLAIMER OF LIABILITY

Lessor shall not be liable for, and Lessee's obligations hereunder shall not be diminished because of, any loss, claim, demand, liability, cost, damage, or expense of any kind to Lessee, its customers, or anyone else, caused, or alleged to be caused, directly or indirectly, by the Equipment, any inadequacy thereof for any purpose, any defect therein, the use or maintenance thereof, any repairs, servicing or adjustments thereto or any delay in providing or failure to provide the same, any interruption or loss of service or use thereof, or any loss of business, proceeds, consequential or any other damage of any nature.

SECTION 7. INDEMNIFICATION

7.1 General Indemnity. From and after the date hereof until the termination of this Lease, the possession, use, operation and maintenance of the Equipment shall be at the sole risk and expense of the Lessee. The Lessee shall defend, indemnify and save harmless the Lessor and the Secured Party, if any, from and against (a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and (b) any and all judgments, claims, causes of action, damages or liabilities (including counsel fees and expenses in connection therewith) which the Lessor or the Secured Party, if any, may incur in any manner by reason of its ownership of, which may arise in any manner out of, or as a result of, the use or operation of any Item of Equipment, or by reason of its condition (whether defects are latent, patent or discernible by Lessee), or as a result of claims for patent infringements, during the term of this Lease, regardless of whether such claims are made during or subsequent to termination. In case any such action, suit or proceeding is brought against Lessor, Lessee, upon Lessor's request, will, at Lessee's expense, resist or defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by

Lessee and approved by Lessor.

7.2 Indemnity for Failure to Obtain Accelerated Depreciation  
Deduction

(a) If the Lessor or its affiliated group shall for any reason (except as hereinbelow provided) fail to obtain or to have the right to claim, or the Lessor or its affiliated group shall be disallowed an ordinary expense deduction under Section 162 of the Internal Revenue Code, taken over a period of Five (5) years or less, or a depreciation or amortization deduction (said ordinary expense deduction, depreciation deduction and amortization deduction hereinafter referred to as "Deduction") with respect to Lessor's Cost of any Item of Equipment, in computing its taxable income for the period this Lease is in effect, computed (i) under one of the accelerated methods of depreciation provided in Section 167(b) of the Internal Revenue Code of 1954, amended to the date hereof, or (ii) under Section 184 of the Internal Revenue Code concerning amortization of railroad rolling stock, except for any inability to obtain or to have the right to claim or for the disallowance of the Deduction under one of the aforesaid methods because of the Occurrence of any of the following events:

- (1) an Event of Loss shall occur



with respect to such Item of Equipment, whereby the Lessee is required by the terms hereof to pay, and shall pay in full, the Casualty Value for such Item of Equipment; provided, however, that the indemnities set forth in this Section 7.2(a) shall continue in effect for the period prior to the Event of Loss as provided in Section 7.3 hereof, notwithstanding such payment of Casualty Value;

(2) at any time while such Item of Equipment is leased hereunder, and while no Event of Default has occurred and is continuing unremedied, without the written consent of the Lessee, the Lessor shall (other than solely in connection with a transfer to the Secured Party, if any) voluntarily transfer legal title to such Item of Equipment to anyone or the Lessor shall dispose of any interest

in such Item of Equipment (other than to Secured Party), or shall reduce its interest in the profits from such Item of Equipment, and such transfer by the Lessor or such disposal or reduction by the Lessor shall be the direct cause of the Lessor's inability to obtain or to have the right to claim or of the disallowance of the Deduction;

(3) the Lessor shall fail to claim the Deduction in its income tax returns for the appropriate year or shall fail to follow the proper procedure in claiming the Deduction, and such failure to claim or to follow such procedure, as the case may be, shall preclude the Lessor from claiming the Deduction;

(4) the Lessor or its affiliated group shall fail to have sufficient income to

benefit from the Deduction; or

(5) the Lessor shall fail to  
take timely action in contesting a claim  
made by the Internal Revenue Service  
with respect to the disallowance of the  
Deduction; and the failure to take such  
action in a timely manner shall preclude  
the right of the Lessor to contest such  
claim;

then, the Lessee shall pay the Lessor as Supplemental Rent an amount  
which, after deduction of all taxes required to be paid by the Lessor  
in respect of the receipt thereof under the laws of the United States  
or any state, city or other political subdivision thereof (after giving  
credit for any savings in respect of any such taxes by reason of  
deductions, credits or allowances in respect of the payment of any other  
such taxes), shall be equal to the additional income taxes and any  
additions to tax or penalties paid or payable by the Lessor or its  
affiliated group in consequence of such failure to obtain or have the right  
to claim, or the disallowance of the Deduction, together with the amount

of any interest which may be assessed against the Lessor in connection with such failure to obtain or have the right to claim, or the disallowance of the Deduction. The aforesaid income taxes shall be calculated on the difference between the Lessor obtaining no Deduction and the Lessor obtaining a Deduction based on the least favorable to it of the aforesaid methods, but in no event shall such Supplemental Rent be an amount greater than 10.8% of Lessor's Cost.

(b) Indemnities pursuant to this Section 7.2 shall be payable on written demand made at any time after the Deduction could have been claimed if allowable or, if claimed and then disallowed, on written notice given by the Lessor or its affiliated group at any time that the Lessor or its affiliated group has first made a payment on account of a tax attributable to the loss of the Deduction.

7.3 Continuing Indemnity. All the indemnities contained in Paragraphs 7.1 and 7.2 shall continue in full force and effect in accordance with their terms notwithstanding the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by, the Lessor and, where appropriate, the Secured Party, if any, and their respective successors and assigns.

SECTION 8. RULES, LAWS AND REGULATIONS

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the Interstate Commerce Commission and the Department of Transportation and all Interchange Requirements of the Association of American Railroads) with respect to the use, maintenance and operation of each Item of Equipment. In case any equipment or appliance on any Item of Equipment shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on any Item of Equipment in order to comply with such laws, regulations, requirements, and rules, the Lessee agrees to make such changes, additions, and replacements.

SECTION 9. USE AND MAINTENANCE OF EQUIPMENT

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Lessee shall not modify any Item of Equipment without the written approval of the

Lessor, which approval shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

SECTION 10. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through, or under the Lessee and its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, or for any other reason, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 10 shall survive termination of this Lease.

SECTION 11. FILING

Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease to be duly filed, registered or recorded in conformity with Section 20c of the Interstate Commerce Act and/or in such other place or places within or without the United States as the Lessor may reasonably request for the protection of its title and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments and reports required by law or reasonably requested by Lessor, by reason of Lessor's ownership of the Equipment, for the purpose of protecting the Lessor's title to the Equipment to the satisfaction of the Lessor's counsel, or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of such action.

SECTION 12. PAYMENT OF FEES AND TAXES

Lessee, or the Lessor at the Lessee's expense, shall report, pay and discharge when due all license and registration fees and all taxes, including without limitation, assessments, sales, use, franchise, interest equalization, property taxes, and gross receipts taxes imposed upon any party or against the Equipment or against the rentals or receipts with respect to the Equipment by any Federal, State, or Local Government, or taxing authority, or any foreign government arising from the use or operation of the Equipment or from the purchase, ownership, delivery, leasing, possession, return or other disposition of the Equipment (excluding any tax measured by the Lessor's net income and any gross receipts or gross income taxes in substitution for or by way of relief from the payment of taxes measured by such net income, provided that the Lessee agrees to pay that portion of any such tax on or measured by rents payable hereunder or the net income therefrom which is in direct substitution for, or which relieves the Lessee from, a tax on the Equipment which the Lessee would otherwise be obligated to pay under the terms of this Section 12), together with any penalties or interest thereon, imposed by any state, federal, or local government upon any Item of Equipment and whether or not the same shall be assessed against or in the name of the



Lessor; provided, however, that the Lessee shall not be required to pay or discharge any such tax or assessment (a) so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment (the Lessee shall, however, reimburse the Lessor for any damages, or expenses resulting from such failure to pay or discharge), or (b) as to assessments against or in the name of anyone other than the Lessee, until Twenty (20) days after written notice thereof shall have been given to the Lessee.

SECTION 13. CASUALTY OCCURRENCE

13.1 Notice. In the event of a Casualty Occurrence the Lessee shall promptly after learning thereof fully inform the Lessor with respect thereto.

13.2 Payment. When the aggregate Casualty Value of Items of Equipment having suffered a Casualty Occurrence (exclusive of Items of Equipment having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Lessor pursuant to this Section 13) shall exceed Fifty Thousand Dollars (\$50,000), the Lessee, on the next succeeding Rental Payment Date, shall pay to the Lessor a sum equal to

the sum of (a) all rent with respect to such Items of Equipment due (including without limitation Fixed Rent for the semi-annual period in which such Casualty Occurrence shall take place), and (b) the Casualty Value of such Item or Items of Equipment as of such Rental Payment Date. Upon making (but not until) such payment in respect to any Item or Items of Equipment, the rental for such Item or Items of Equipment shall cease to accrue and the Lessee shall be the agent of the Lessor to dispose of such Item or Items of Equipment for the best price obtainable and shall retain all amounts thereof up to the Casualty Value paid by the Lessee and shall remit the excess, if any, to the Lessor.

13.3 Risk of Casualty Occurrence. The Lessee shall bear the risk of any Casualty Occurrence prior to the Commencement Date with respect to any Item of Equipment. Likewise, Lessee shall bear the risk of and shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment after the date of the Lessee's execution of a Certificate of Acceptance with respect to such Item of Equipment.

13.4 Partial Requisition. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by

any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease, the Lessee's duty to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

SECTION 14. ANNUAL REPORTS

A. On or before May 1 in each year, commencing with the year 1971, the Lessee will furnish to the Lessor or its assigns an accurate statement, as of the end of the preceding fiscal year, (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding Twelve (12) months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably

request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 5 hereof shall have been preserved or replaced, and that the name of no person, association or corporation appearing on any Item of Equipment may be interpreted as indicating a claim of ownership thereof by any such person, association, or corporation except as contemplated pursuant to this Lease.

B. Lessee will furnish Lessor, within Sixty (60) days after the end of the first, second, and third quarterly accounting periods in each fiscal year of Lessee, copies of the balance sheet and profit and loss statement for said periods, and certified to by an officer of the Lessee. Lessee will further furnish to Lessor, within One Hundred Twenty (120) days after the end of the fiscal year of Lessee, copies of the balance sheet and profit and loss statement, certified by independent public accountants.

SECTION 15. INSPECTION

The Lessor or its assigns shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall

be reasonably necessary to confirm to the Lessor or its assigns the existence and proper maintenance thereof during the continuance of this Lease.

SECTION 16. RETURN OF EQUIPMENT UPON EXPIRATION  
OF TERM

Upon the expiration of the Term with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding Three (3) months and transport the same at any time within such Three (3) month period to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than Thirty (30) days' written notice to the Lessee. All movement and storage of each such Item of Equipment is to be at the expense of the Lessee, but at the risk of the Lessor. During any such storage period, the Lessee will permit the Lessor or any person designated by

it, including the authorized representative or representatives of any prospective purchaser of any such Item of Equipment to inspect the same. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

SECTION 17. DEFAULT

17.1 Events of Default. If, during the continuance of the Lease, one or more of the following Events of Default shall occur:

(a) if Lessee shall default in the due and punctual payment of any part of the Rental provided in Section 4 hereof, and in the payment of any other sums payable to Lessor, and such default shall continue for Ten (10) days; or

(b) if Lessee shall default in a due performance or observance of any of the terms of Sections 9, 10, 11, and 12 of this Lease; or

(c) if Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Equipment, or any part thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Equipment within Thirty (30) days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession; or

(d) if Lessee shall default in a due performance or observance of any of the other terms of this Lease, other than those referred to in Paragraphs (a), (b), and (c) of this Section, and such default is continued for more than Fifteen (15) days after written notice thereof from Lessor; or

(e) if any execution or attachment shall be issued whereby any Item of Equipment shall be taken or attempted to be taken by someone other than Lessor

and the same shall not be vacated within Thirty (30) days after the issuance thereof; or

(f) if Lessee shall abandon any Item of Equipment otherwise than as permitted by this Lease; or

(g) if Lessee shall default in the payment of any principal or premium, if any, or interest on any indebtedness for borrowed money, in excess of Twenty Five Thousand Dollars (\$25,000) per Item, and such default shall continue for more than the period of grace, if any, specified therein, and for more than Ten (10) days after receipt of written notice from Lessor to Lessee; or

(h) if Lessee shall consent to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or Lessee shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors, or shall file a voluntary



petition in bankruptcy or a voluntary petition or  
an answer seeking reorganization under Section 77  
of the Bankruptcy Act, as now constituted or as said  
Section 77 may be hereafter amended or an answer  
admitting the material allegations of a petition  
filed against Lessee in any such proceeding, or  
Lessee shall, by voluntary petition, answer or consent,  
seek relief under the provisions of any other now  
existing or future bankruptcy or other similar law  
providing for the reorganization or winding-up of  
corporations, or providing for an agreement,  
composition, extension or adjustment with its creditors;  
or

(i) if an order, judgment, or decree shall  
be entered by any court of competent jurisdiction appointing,  
without the consent of Lessee, a receiver, trustee or  
liquidator of Lessee or of any substantial part of its  
property or any substantial part of the property of

Lessee shall be sequestered, and any such order, judgment, or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of Ninety (90) days after the date of entry thereof; or

(j) if a petition for reorganization under Section 77 of the Bankruptcy Act or if a proceeding against Lessee under any of the other Federal Bankruptcy laws or other insolvency laws (as now or hereafter in effect) shall be filed and shall not be withdrawn or dismissed within Ninety (90) days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to Lessee, any court of competent jurisdiction shall assume jurisdiction, custody, or control of Lessee or of any substantial part of its property and such jurisdiction, custody, or control shall remain in force unrelinquished, unstayed or unterminated for a period of Ninety (90) days;

then, and in any such event, the Lessor at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) at any time thereafter give written termination notice to Lessee and upon such notice the term of this Lease shall expire and terminate by limitation and all rights of Lessee hereunder shall cease, without relieving Lessee of its liabilities and obligations hereunder, all of which shall survive such termination; or

(c) repossess the Equipment or any part thereof by force or without judicial proceedings or by summary proceedings or otherwise, and enter upon any and all of Lessee's property for such purpose, Lessee hereby waiving all claims against Lessor by reason of any damage or loss suffered by

Lessee as a result of such repossession; or

(d) sell, at public or private sale,  
as Lessor may determine, or otherwise  
dispose of, hold, use, operate, lease to others  
or keep idle any Equipment as Lessor in its sole  
discretion may determine, free and clear of any  
rights of Lessee and without any duty to account  
to Lessee with respect to such action or inaction  
or for any proceeds with respect thereto except  
to the extent required above; or

(e) demand and receive an amount equal  
to all Rental and other sums which may have accrued  
to the date of such termination plus (i) in the event  
of a sale of the Equipment, the amount of any  
deficiency between the proceeds of said sale and the  
Casualty Value on the date of such demand; or (ii)  
in all instances other than a sale of the Equipment,  
as damages for loss of a bargain, and not as a penalty,  
a sum, with respect to each Item of Equipment, which

represents the excess of the present worth, at the time of such termination, of all Rentals for such Item of Equipment which would otherwise have accrued hereunder from the date of such termination to the end of the Term as to such Item of Equipment over the then present worth of the then fair rental value of such Item of Equipment for such period computed by discounting to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the Item of Equipment during such period, such present worth to be computed in each case on a basis of Nine Per Cent (9%) per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (iii) any damages and expenses, including reasonable attorney's fees which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease.

17.2 Waiver. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rental payments due hereunder, and agrees to make the rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with the lease of the Equipment. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 18. RETURN OF EQUIPMENT UPON DEFAULT

If the Lessor shall terminate this Lease pursuant to Section 17 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its

own cost, expense and risk (except as hereinafter stated):

A. Forthwith place such Item of Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

B. Permit the Lessor to store such Item of Equipment in such reasonable storage place on the Lessee's lines of railroad for a period not exceeding Six (6) months at the risk of the Lessee; and

C. Transport such Item of Equipment, at any time within such Six (6) month period, to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may reasonably direct upon not less than Thirty (30) days' written notice to the Lessee.

The assembling, delivery, storage, and transporting of the Equipment as

hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lease so to assemble, deliver, store, and transport the Equipment.

Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 18, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Item of Equipment to the Lessor, to demand and take possession of such Item of Equipment in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item of Equipment.

SECTION 19. ASSIGNMENT

19.1 Subsequent Financing. The Lessee understands that the Lessor intends to obtain financing in connection with this Lease and, as security therefor, to assign to the Secured Party its rights hereunder, all or a part of the rent to be paid hereunder and its rights to the Equipment. The Lessee agrees to cooperate with the Lessor in connection



with the placement of such financing and to execute and file, at the Lessor's expense, such documents and instruments in connection therewith as may be reasonably requested by the Lessor; provided, however, that nothing herein contained shall require the Lessee to agree to an amendment of this Lease in the event of any such financing.

19.2 Assignment. This Lease shall be assignable in whole or in part by Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. In the event that separate assignments are executed by the Lessor in respect of this Lease and the rental and other sums due and to become due hereunder insofar as the same relate to Items of Equipment described in different schedules hereto, the Lessor and the Lessee agree that so long as such separate assignments remain in force and effect this Lease shall be deemed to be and shall be construed as a divisible and severable contract between the Lessor and the Lessee for the leasing of Items of Equipment covered by each such separate assignment and each assignee shall be entitled to exercise all of the rights and remedies of the Lessor in respect of the Items of Equipment covered by the separate assignment to such assignee all to the same

extent and with the same force and effect as though a separate lease had been entered into by the Lessor and the Lessee in respect of such Items of Equipment. Upon notice to the Lessee of any such assignment the rental and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to the assignee.

19.3 Payment to Assignee. The Lessee acknowledges and agrees that the rights of any assignee, including, without limitation, the Secured Party, in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of or defect in the Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of such assignee) in the use, operation, or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the

Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment.

SECTION 20. POSSESSION AND USE

20.1 Assignment by the Lessee. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any Item of Equipment (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject such leasehold interest to the lien thereof). The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any Item of Equipment, except to the extent otherwise permitted by the provisions of this Section 20.

20.2 Interchange. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or

operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i. e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or any such corporation has trackage or other operating rights or over which Equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Equipment upon connecting and other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease; and the Lessee may receive and retain compensation for such use from other railroads so using any of the Equipment. No assignment, sublease or interchange entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

20.3 Merger. Nothing in this Section 20 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation (which shall have duly assumed the obligations hereunder of the Lessee and which shall have a net worth, after the

merger or consolidation, at least equal to the net worth of Lessee as it exists on the date of the execution of this Lease) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

SECTION 21. OPINION OF COUNSEL

Concurrently with the execution of this Lease, the Lessee will deliver to the Lessor five counterparts of the written opinion of counsel for the Lessee addressed to the Lessor, and to the Secured Party, if any, in scope and substance satisfactory to the Lessor and the Secured Party, if any, to the effect that:

A. The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Virginia, with adequate corporate power to enter into this Lease;

B. The Lessee is duly qualified, licensed and in good standing in each jurisdiction wherein the character of the properties owned or the nature of the activities conducted required such qualification;

C. This Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal, and binding agreement of the Lessee enforceable in accordance with its terms;

D. Lessor is vested with good, merchantable, and outright title to the Equipment, free of any mortgage lien, pledge, encumbrance, conditional sale or other title retention agreement, lease, charge or claim, other than this Lease;

E. If this Lease is filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, no other filing, recording or depositing is necessary to protect the Lessor's title to the Equipment;

F. No approval is required from any public regulatory body with respect to the entering into or performance of this Lease and, generally, this Lease is not in violation of any statute or governmental rules or regulations;

G. The entering into and performance of this Lease will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the Lessee's leasehold interest under this Lease in the Equipment (except to the extent that the provisions of any existing mortgage of the Lessee may require the subjection of such leasehold interest to the lien thereof) pursuant to any indenture, mortgage, deed of trust, bank loan or

credit agreement or other instrument to which the Lessee is a party or by which it may be bound.

SECTION 22. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, first-class, postage prepaid, addressed as follows:

If to the Lessor: American Computer Leasing Corporation  
14 East Fourth Street  
Cincinnati, Ohio 45202  
Attention: Mr. Robert C. Lintz  
Vice President & Treasurer

If to the Lessee: Seaboard Coast Line Railroad Company  
Treasury Department  
P. O. Box 1620  
Richmond, Virginia 23213  
Attention: Mr. Leonard G. Anderson  
Treasurer

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 23. OPTION TO PURCHASE

23.1 Price. Provided that the Lessee is not in default, the Lessee shall have an option to purchase, upon the expiration of the Term, each Item of Equipment subject to this Lease upon the following

terms and conditions:

(a) If the Lessee desires to exercise this option, it shall, at least Sixty (60) days prior to expiration of the Term, give the Lessor written notice of its election to purchase, identifying the Items of Equipment which it elects to purchase and stating as to each the fair market value thereof as believed by the Lessee, and shall upon the expiration of the Term, with respect to such Items of Equipment, pay to the Lessor in cash the purchase price for each Item of Equipment so purchased, determined as hereinafter provided; and

(b) The purchase price of each Item of Equipment shall be the fair market value thereof as of the date of purchase. If the Lessee and the Lessor are unable to agree upon the fair market value of any Item of Equipment within Fifteen (15) days after receipt by the Lessor of the notice specified herein, such fair market value shall be determined by an appraiser



selected by the mutual agreement of the Lessor and the Lessee. If such fair market value is not so determined prior to expiration of the Term, the same shall be determined by American Appraisal Company and shall bear interest from the date of expiration of the Term to the date of payment at Nine Per Cent (9%) per annum.

23.2 Risk of Loss. Notwithstanding any election under this Section 23 of the Lessee to purchase, the provisions of Section 13 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Items of Equipment purchased by the Lessee upon the date of purchase, unless the purchase price has been agreed upon by the parties pursuant to this Section 23, in which event such purchase price shall govern in the event of a Casualty Occurrence prior to the date of purchase.

SECTION 24. MISCELLANEOUS

24.1 Law Governing. This Lease shall be construed in accordance with the laws of the State of Ohio; provided, however, that the parties shall be entitled to all rights conferred by any applicable federal statute,

rule or regulation.

24.2 Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

24.3 Equipment to Remain Personal Property. The Equipment shall, at all times, remain personal property and Lessee will not take any action, with respect to said Equipment, that would confer upon any person an interest in the Equipment.

24.4 Lessor's Right to Perform Lessee's Covenants. If Lessee shall fail to make any payment or perform any act required to be made or performed by it hereunder, Lessor, upon notice and demand upon Lessee, and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account of and at the expense of Lessee, and may enter upon any and all of Lessee's property for such purpose and take all such action thereon as, in Lessor's opinion, may be necessary or appropriate therefor. All sums so paid by Lessor, together with interest thereon at the rate of Nine Per Cent (9%) per annum from the date of payment shall

constitute supplemental Rent hereunder and shall be paid by Lessee to Lessor on demand.

24.5 Estoppel Certificate by Lessee. Lessee will execute, at any time upon request by Lessor, acknowledge and deliver to Lessor an Officer's Certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications that the Lease is in full force and effect, as modified, and stating the modifications) and (b) the dates, if any, to which rental have been paid. Any such certificate may be relied upon by any prospective purchaser or mortgagee of the Equipment.

24.6 Invalidity of Portions of Lease. Any provision in this Lease and any Schedule which is in conflict with any statute, law or rule shall be deemed omitted, modified or altered to conform thereto. The invalidity of any portion of this Lease shall not affect the force and effect of the remaining valid portions hereof.

24.7 Acts of Agents. No agent or employee of Lessor is authorized to bind Lessor under this Lease, or to waive, alter or add to the terms and conditions printed herein.

24.8 Amendments. Neither this Lease nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing filed by the party against whom enforcement of the change, waiver, discharge or termination is sought. All the terms and provisions of this Lease shall be binding upon Lessee and Lessor and their respective successors and assigns.

SECTION 25. FEE

Lessee agrees to pay to Lessor, upon each Commencement Date, and as part consideration for the execution of this Lease, a fee equal to 10.1952% of Lessor's cost for all Items of Equipment subject to such Commencement Date.

SECTION 26. REPRESENTATIONS AND WARRANTIES

LESSOR IS NOT A MANUFACTURER OR VENDOR OF EQUIPMENT, AND HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO MERCHANTABILITY, FITNESS FOR ANY PURPOSE, CONDITION, QUALITY, DURABILITY, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT OR IN CONNECTION WITH, OR FOR THE PURPOSES OR USES OF LESSEE.

OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER EXPRESSED OR IMPLIED, WITH RESPECT THERETO. Lessee agrees that Lessor shall not be liable for any latent or patent defect in the Equipment or any part thereof. Lessee assumes all risks of any defect in the condition, quality and fitness or availability for use of the Equipment.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and their corporate seals to be hereto affixed as of the day and year first above written.

[Corporate Seal]

Attest:

Landra White-Harmon  
Secretary

AMERICAN COMPUTER LEASING  
CORPORATION

BY:

Robert L. Lint  
Its Vice President and Treasurer  
LESSOR

[Corporate Seal]

Attest:

J. F. Williams  
Assistant Secretary

SEABOARD COAST LINE RAILROAD  
COMPANY

BY:

Leonard H. Anderson  
Its Treasurer

LESSEE

STATE OF OHIO )  
: SS.  
COUNTY OF HAMILTON)

On this 22 day of September, 1970, before me personally appeared Robert. C. Lintz  
to me personally known, who being by me duly sworn, says that he is  
the Vice President and Treasurer of AMERICAN COMPUTER  
LEASING CORPORATION; that one of the seals affixed to the foregoing  
instrument is the corporate seal of said corporation; that said instrument  
was signed and sealed on behalf of said corporation by authority of its  
Board of Directors; and he acknowledged that the execution of the fore-  
going instrument was the free act and deed of said corporation.

[SEAL]

My commission expires:

Donald P. Klekamp  
Notary Public  
DONALD P. KLEKAMP, Attorney at Law  
Notary Public, State of Ohio  
My commission has no expiration date  
Section 147.03 R. C.

STATE OF VIRGINIA)  
: SS.  
CITY OF RICHMOND)

On this 23rd day of September, 1970, before me personally appeared  
Leonard G. Anderson, to me personally known, who being by me duly sworn,  
says that he is the Treasurer of SEABOARD COAST LINE RAILROAD  
COMPANY; that one of the seals affixed to the foregoing instrument is the  
corporate seal of said corporation; that said instrument was signed and sealed  
on behalf of said corporation by authority of its Board of Directors; and he  
acknowledged that the execution of the foregoing instrument was the free act  
and deed of said corporation.

[SEAL]

My commission expires:  
JUL 12 1974

J. H. Chapman  
Notary Public

EXHIBIT "A"

DESCRIPTION OF EQUIPMENT

350 40-foot, 6 inch, 50-ton box cars bearing  
identifying numbers SCL 11450 through  
SCL 11799, both inclusive

350 40-foot, 6 inch, 50-ton gondola cars  
bearing identifying numbers SCL 132100  
through SCL 132449, both inclusive

EXHIBIT "B"

SCHEDULE OF CASUALTY VALUE

<u>Rental Payment Date</u>	<u>Percentage of Lessor's Cost</u>
1 .....	94.594
2 .....	88.930
3 .....	82.995
4 .....	76.775
5 .....	70.258
6 .....	63.428
7 .....	56.271
8 .....	48.771
9 .....	40.912
10 .....	32.677
11 .....	24.047
12 .....	15.000



EXHIBIT "C"

CERTIFICATE OF ACCEPTANCE

RAILROAD EQUIPMENT MASTER LEASE AGREEMENT  
DATED AS OF AUGUST 15, 1970  
BY AND BETWEEN

AMERICAN COMPUTER LEASING CORPORATION  
and  
SEABOARD COAST LINE RAILROAD COMPANY

TO: American Computer Leasing Corporation, Lessor  
Seaboard Coast Line Railroad Company, Lessee

I, the duly appointed inspector and authorized representative of the Lessor and the Lessee for the purpose of the Railroad Lease Agreement, both dated as of August 15, 1970, between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery, first on behalf of the Lessor pursuant to the Railroad Equipment Reconstruction Agreement, and next on behalf of the Lessee pursuant to the Lease, of the following pieces of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

NUMBERED:

I do further certify that the foregoing Equipment is in good order and condition, and appears to conform to the specifications applicable

EXHIBIT "C"--Page 2

thereto and to all applicable Interstate Commerce and Department of Transportation requirements and specifications and that each Item has been marked in accordance with Section 5.2 of the Lease.

The execution of this Certificate will in no way relieve or decrease the responsibility of the Rebuilder of the Equipment for any warranties it has made with respect to the Equipment under the Railroad Equipment Reconstruction Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Inspector and Authorized Representative  
of Lessor and Lessee

EXHIBIT "D"

SCHEDULE \_\_\_\_\_

Dated: \_\_\_\_\_

Pursuant to Master Lease Agreement dated \_\_\_\_\_  
between American Computer Leasing Corporation ("Lessor") and Seaboard  
Coast Line Railroad Company ("Lessee"), the terms of which are hereby  
incorporated herein by reference, Lessor does hereby lease to Lessee,  
and Lessee does hereby lease from Lessor, the following described Items  
of Equipment:

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AMERICAN COMPUTER LEASING  
CORPORATION

BY: \_\_\_\_\_

EXHIBIT "D"--Page 2

WITNESSES:

SEABOARD COAST LINE RAILROAD  
COMPANY

BY: \_\_\_\_\_

STATE OF OHIO )  
COUNTY OF HAMILTON)

On this      day of      , 1970, before me personally appeared  
\_\_\_\_\_, to me personally known, who being by  
me duly sworn, says that he is the \_\_\_\_\_ of American  
Computer Leasing Corporation; that one of the seals affixed to the foregoing  
instrument is the corporate seal of said corporation; that said instrument was  
signed and sealed on behalf of said corporation by authority of its Board of  
Directors; and he acknowledged that the execution of the foregoing instrument  
was the free act and deed of said corporation.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission expires:  
\_\_\_\_\_

STATE OF VIRGINIA)  
: SS.  
CITY OF RICHMOND)

On this      day of      , 1970, before me personally appeared  
Leonard G. Anderson, to me personally known, who being by me duly sworn,  
says that he is the Treasurer of Seaboard Coast Line Railroad Company; that  
one of the seals affixed to the foregoing instrument is the corporate seal of said  
corporation; that said instrument was signed and sealed on behalf of said  
corporation by authority of its Board of Directors; and he acknowledged that the  
execution of the foregoing instrument was the free act and deed of said corpora-  
tion.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission expires:  
\_\_\_\_\_

ANNEX C

**ASSIGNMENT OF LEASE AND AGREEMENT** dated as of December 1, 1970, by and between AMERICAN COMPUTER LEASING CORPORATION, an Ohio corporation (hereinafter called the Company) and THE PROVIDENT BANK as Trustee (hereinafter called the Trustee), under an Equipment Trust Agreement dated as of December 1, 1970 (hereinafter called the Equipment Trust Agreement), between the Trustee and the Company.

WHEREAS the Company, as Lessor and Seaboard Coast Line Railroad Company, as Lessee (hereinafter called the Lessee), have entered into a Lease (as defined in the Equipment Trust Agreement), providing for the leasing by the Company to the Lessee of the Units (as defined in the Lease); and

WHEREAS, in order to provide security for the obligations of the Company under the Equipment Trust Agreement and as an inducement to the purchasers of the equipment trust certificates to be issued under the Equipment Trust Agreement to purchase said certificates, the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Trustee;

Now, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. As security for the payment and performance of its obligations under the Equipment Trust Agreement, the Company hereby assigns, transfers, and sets over unto the Trustee all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Pay-

ments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease.

The Company agrees to cause all the Payments to be made directly to the Trustee at Fourth and Vine Streets, Cincinnati, Ohio 45202. The Trustee will accept all Payments and all payments pursuant to this Assignment and will apply the same as follows: *first*, to or toward the payment of all amounts then due and payable or which shall become due and payable on the next succeeding January 1 and July 1, as the case may be, under and in accordance with the Equipment Trust Agreement and the Trustee shall credit such Payments and such payments pursuant to this Assignment so applied to the amounts so due and payable or so to become due and payable on the next succeeding January 1 and July 1, as the case may be, by the Company under the Equipment Trust Agreement; and *second*, so long as, to the actual knowledge of the Trustee, no Event of Default (as defined in the Equipment Trust Agreement) or event known to the Trustee which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and then be continuing, any balance of such Payments and such payments pursuant to this Assignment remaining shall be paid over to the Company by the Trustee. So long as, to the actual knowledge of the Trustee, an Event of Default or event which with notice of lapse of time or both, would constitute an Event of Default shall then be continuing, the Trustee shall not pay over any of the Payments or such payments pursuant to this Assignment, but, during such continuance, shall apply all Payments and all such payments pursuant to this Assignment in a manner consistent with the provisions of the Equipment Trust Agreement. Payments in respect of Casualty Occurrences (as defined in the Equipment Trust Agreement) shall be applied as provided in the Equipment Trust Agreement. Anything in this Assignment to the contrary notwithstanding, no amounts shall be considered to be due and payable by the Company under the Equipment Trust Agreement in the event that such

amounts shall have been paid by the Lessee to the Trustee pursuant to the Lease, the Equipment Trust Agreement, this Assignment and/or the Lessee's Acknowledgment annexed hereto.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify any liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Trustee or holders of the Trust Certificates.

3. To protect the security afforded by this Assignment, the Company agrees as follows:

(a) To abide by, perform and discharge each and every obligation, covenant and agreement of the Lease by the Company to be performed; at the sole cost and expense of the Company (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to enforce or secure the performance of each and every obligation, covenant, condition and agreement contained in the Lease by the Lessee to be performed; without the written consent of the Trustee not to anticipate the rents under the Lease or to waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein; to hold any Payments received by the Company which are assigned and set over to the Trustee by this Assignment in trust for the Trustee and to turn them to the Trustee forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to (i) appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and (ii) pay all costs and expenses of the Trustee, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Trustee may appear.

(c) That should the Company fail to make any payment or to do any act as herein provided, then the Trustee, but without obligation so to do and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

(d) To pay immediately upon demand, all sums expended by the Trustee under the authority hereof, together with interest thereon at the rate of 10% per annum.

4. The Company does hereby constitute the Trustee the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims



or take any action or institute any proceedings which to the Trustee may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Equipment Trust Agreement, the assignment made hereby and all rights herein assigned to the Trustee shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease and the Payments shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Equipment Trust Agreement have each been duly authorized, and the Lease, this Assignment and the Equipment Trust Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease and the Trustee's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances prior to or *pari passu* with the interests of the Trustee, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Equipment Trust Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Equipment Trust Agreement on or prior to the date hereof and (e) the Lease and the Equipment Trust Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Lease and the Equipment Trust Agreement) or any event which with notice and/or lapse of time would constitute such an Event of Default.

If an Event of Default (as defined in the Equipment Trust Agreement) shall occur and be continuing, the Trustee shall be entitled (i) to exercise all the rights, privileges and remedies available to the Lessor under the Lease and to the Trustee under the Equipment Trust Agreement and (ii) to do any acts which the Trustee deems proper to pro-

fect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or the Equipment Trust Agreement, or invalidate any act done hereunder.

7. The Company covenants and agrees with the Trustee that in any suit, proceeding or action brought by the Trustee under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Trustee or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Trustee may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

9. The Trustee may assign to any successor trustee appointed pursuant to Section 8.06 of the Equipment Trust Agreement or any co-trustee or separate trustee appointed pursuant to Section 8.09 thereof all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all obligations of the Trustee hereunder.

10. The Company agrees that it will not, without the prior written consent of the Trustee, enter into any agreement amending, modifying or terminating the Lease and that any amendment, modification or termination thereof without such consent shall be void.

11. This Assignment shall be governed by the laws of the State of Ohio; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

12. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Trustee at Fourth and Vine Streets, Cincinnati, Ohio 45202, or at such other address as the Trustee shall designate.

13. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above written.

[ CORPORATE SEAL] AMERICAN COMPUTER LEASING CORPORATION,  
by .....  
*Vice President and Treasurer.*

Attest:

.....  
*Secretary.*

Accepted:

THE PROVIDENT BANK, as Trustee,  
by .....  
*Vice President.*

STATE OF OHIO }  
COUNTY OF HAMILTON } ss.:

On this       day of       , 1970, before me personally appeared ROBERT C. LINTZ, to me personally known, who, being by me duly sworn, says that he is a Vice President and Treasurer of AMERICAN COMPUTER LEASING CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
Notary Public

[NOTARIAL SEAL]

**LESSEE'S ACKNOWLEDGMENT OF ASSIGNMENT**

The undersigned, a Virginia corporation, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Assignment), hereby acknowledges receipt of a copy of the Assignment.

In connection with the equipment trust certificates to be issued pursuant to the Equipment Trust Agreement (hereinafter called the Equipment Trust Agreement) dated as of December 1, 1970, between The Provident Bank, as Trustee (hereinafter called the Trustee) and American Computer Leasing Corporation (hereinafter called the Lessor), (a copy of which has been delivered to the undersigned) pursuant to which the Lessor is partially financing its purchase of the units of railroad equipment (hereinafter called the Units) being leased by the Lessor to the undersigned pursuant to the Lease, the undersigned for and in consideration of other good and valuable consideration, confirms its agreement that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder, directly to the Trustee, at Fourth and Vine Streets, Cincinnati, Ohio 45202 (or at such other address as may be furnished in writing to the undersigned by the Trustee); and, if the undersigned fails for any reason whatsoever to pay to the Trustee any Payments, it will pay to the Trustee, on the respective dates and times set forth in the Lease on which the Payments are specified to be due thereunder, sums equivalent to the Payments which the undersigned shall not theretofore have paid to the

Trustee; it being hereby agreed that the undersigned's obligation to pay all the aforesaid Payments or sums equivalent to the Payments is absolute and unconditional;

(2) the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Trustee were named therein as the Lessor;

(3) the Payments or sums equivalent to the payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Lessor or otherwise, and the payment thereof to the Trustee shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Trustee against, any liens, charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Trustee not arising out of the transactions contemplated by the Equipment Trust Agreement, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease, prior to or *pari passu* with the right of the Trustee to apply such Payments or sums equivalent thereto, as provided in the Assignment;

(4) except as otherwise provided in subparagraph (5) below the Lease shall not, without the prior written consent of the Trustee, be amended, terminated or modified, or any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease; and

(5) it agrees that, so long as the Equipment Trust Agreement may be in effect, it will cause the Units to be marked as provided in Section 4.06 of the Equipment Trust Agreement as soon

as practicable after the execution of this Acknowledgment of Assignment.

Dated as of December 1, 1970.

SEABOARD COAST LINE RAILROAD  
COMPANY,

by .....  
*Treasurer.*

[ CORPORATE SEAL ]

Attest:

.....  
*Secretary.*

Accepted:

THE PROVIDENT BANK, as Trustee,

by .....  
*Vice President.*



STATE OF VIRGINIA }  
CITY OF RICHMOND } ss.:

On this            day of January, 1971, before me personally appeared LEONARD G. ANDERSON, to me personally known, who, being by me duly sworn, says that he is the Treasurer of SEABOARD COAST LINE RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
Notary Public

My Commission Expires:  
[NOTARIAL SEAL]

RAILROAD EQUIPMENT PURCHASE AGREEMENT

Dated as of August 15, 1970

American Computer Leasing Corporation  
14 East Fourth Street  
Cincinnati, Ohio 45202

Attention: Mr. Robert C. Lintz  
Vice President and Treasurer

Gentlemen:

Seaboard Coast Line Railroad Company, a Virginia corporation (the "Seller"), owns the railroad freight cars described in Schedule 1 hereto (collectively the "Equipment" and individually "Item of Equipment"). The Seller hereby agrees to sell the Equipment to you (the "Purchaser") and the Purchaser hereby agrees to purchase the Equipment from the Seller; all on the terms and conditions set forth herein.

1. The purchase price of the Equipment shall be the price set forth in Schedule 1 hereto.

2. The Seller will deliver the Equipment to an authorized representative of the Purchaser authorized to accept delivery thereof at the delivery point or points designated by the Purchaser. Following delivery of a group of Equipment (each of which groups of Equipment shall contain such number of Items of Equipment as shall be mutually agreed upon by the Purchaser and the Seller from time to time) to such authorized representative, the Purchaser will pay to the Seller on or before the outside Delivery Date set forth in Schedule 1 hereto the purchase price of the Equipment upon receiving from the Seller (a) a Certificate or Certificates of Acceptance signed by such authorized representative stating that the Equipment in such groups have been delivered to and accepted on behalf of the Purchaser, (b) a Bill or Bills of Sale of the Seller transferring title to such Equipment to the Purchaser and warranting that at the time of delivery of such Equipment to the Purchaser, the Seller had legal title to such Equipment and good and lawful right to sell the same and that title to such Equipment transferred to the Purchaser by such Bill or Bills of Sale was, at the time of delivery of such Equipment to the Purchaser, free of all claims, liens,

and encumbrances of any nature, and (c) a written opinion of counsel for the Seller that such Bill or Bills of Sale are valid and effective to transfer good title to such Equipment to the Purchaser, free of all claims, liens, and encumbrances of any nature.

3. Delivery of the Equipment pursuant to this Agreement shall commence as soon as practicable and shall be completed on or before said outside Delivery Date.

4. In the event that the reconstruction of any Item of Equipment sold to the Purchaser pursuant hereto shall not be completed by the Seller on or prior to said outside Delivery Date under the Railroad Equipment Reconstruction Agreement dated as of August 15, 1970, between the Seller and the Purchaser and has not been leased and delivered to the Seller on or prior to said date pursuant to the Railroad Equipment Lease Agreement dated as of August 15, 1970, between the Purchaser and the Seller, the Seller agrees to repurchase such Item of Equipment from the Purchaser at a price equal to the purchase price paid by the Purchaser to the Seller for such Item of Equipment together with interest at the rate of 9 percent per annum on the amounts paid by the Purchaser in respect of said purchase price from the date of payment to the date of repurchase by the Seller.

If the foregoing arrangement concerning sale of the Equipment is satisfactory to the Purchaser, please confirm by signing and returning the enclosed copy of this letter to the undersigned.

Very truly yours,

SEABOARD COAST LINE RAILROAD COMPANY

BY:

Leonard G. Anderson  
Leonard G. Anderson, Treasurer

SELLER

ACCEPTED:

AMERICAN COMPUTER LEASING CORPORATION

BY:

Robert C. Lintz  
Robert C. Lintz, Vice President and Treasurer

PURCHASER

SCHEDULE 1

TO PURCHASE AGREEMENT

Description of Equipment: 350 Class KS-18 gondola cars bearing identifying numbers in the Series SCL 693000 through 694499, both inclusive

Total Purchase Price: \$425,250

Outside Delivery Date: December 29, 1971

Description of Equipment: 350 Class 0-26 box cars bearing identifying numbers in the Series SCL 621630 through SCL 623595, both inclusive, and 624000 through SCL 624499, both inclusive

Total Purchase Price: \$64,400

Outside Delivery Date: December 29, 1971